

Protecting the Killers

A Policy of Impunity in Punjab, India

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I. Summary

I did everything in the pursuit of truth and justice. I even begged. But all this failed me. What else could I have done?...There is a Punjabi saying that after 12 years, even a pile of manure gets to be heard. But for me, after 12 years, nobody is listening—this must mean that I am worth even less than manure.

-Mohinder Singh, father of extrajudicial execution victim Jugraj Singh

Despite a strong democracy and a vibrant civil society, impunity for human rights abuses is thriving in India. Particularly in counterinsurgency operations, Indian security forces commit human rights abuses with the knowledge that there is little chance of being held accountable. Human Rights Watch documented this most recently in its September 2006 report, *“Everyone Lives in Fear”: Patterns of Impunity in Jammu and Kashmir*, which showed a vicious cycle of abuse and impunity that has fueled the conflict.

The impunity gap in India is nowhere more evident than in Punjab. Over a decade has passed since the government defeated a separatist Sikh rebellion. Tens of thousands of people died during this period, which stretched from early 1980s through the mid-1990s. Sikh militants were responsible for serious human rights abuses including the massacre of civilians, attacks upon Hindu minorities in the state, indiscriminate bomb attacks in crowded places, and the assassination of a number of political leaders. Prime Minister Indira Gandhi’s Sikh bodyguards assassinated her in 1984. The Sikh insurgency paralyzed the economy and led to widespread extortion and land grabs.

At the same time, from 1984 to 1995 the Indian government ordered counterinsurgency operations that led to the arbitrary detention, torture, extrajudicial execution, and enforced disappearance of thousands of Sikhs. Police abducted young Sikh men on suspicion that they were involved in the militancy, often in the presence of witnesses, yet later denied having them in custody. Most of the victims of such enforced disappearances are believed to have been killed. To hide the evidence of their crimes,

security forces secretly disposed of the bodies, usually by cremating them. When the government was questioned about “disappeared” youth in Punjab, it often claimed that they had gone abroad to Western countries.

Special counterinsurgency laws, and a system of rewards and incentives for police to capture and kill militants, led to an increase in “disappearances” and extrajudicial executions of civilians and militants alike. In 1994, Human Rights Watch and Physicians for Human Rights described the government’s operations as “the most extreme example of a policy in which the end appeared to justify any and all means, including torture and murder.”

The Punjab mass cremations case – a primary subject of this report—has its roots in investigations by human rights activists Jaswant Singh Khalra and Jaspal Singh Dhillon conducted in 1994 and early 1995, when they used government crematoria records to expose over 6,000 secret cremations by the police in just one of then 13 districts in Punjab. Based on the information gathered by them, the Committee for Information and Initiative on Punjab (CIIP) moved the Supreme Court in April 1995 to demand a comprehensive inquiry into extrajudicial executions ending in secret cremations.

Meanwhile, after repeatedly threatening him, several officials of the Punjab police arbitrarily arrested, detained, tortured, and killed Jaswant Singh Khalra in October 1995. Khalra’s murder, and the eventual conviction of his killers 10 years later, made the reality of thousands of “disappearances” and extrajudicial executions impossible to deny. The Indian government even admitted that it illegally cremated 2,097 individuals in Amritsar. Alarming, officials are yet to be held accountable for these thousands of custodial deaths.

After hearing the CIIP petition, the Supreme Court, in 1996, ordered India’s National Human Rights Commission (NHRC) to address all issues that arose from the mass cremations and granted the Commission extraordinary powers to complete this task. In over 10 years of proceedings, however, the NHRC has failed to properly address civil liability and accountability issues by refusing to independently investigate a single abuse or allow a single victim family to testify. Instead, the Commission has

based its findings on information provided by the Punjab police, the perpetrators of the cremations. Furthermore, the Commission has limited its inquiry to 2,097 cremations in three crematoria in one district of Punjab and has refused to consider mass cremations, extrajudicial executions, and “disappearances” throughout the rest of the state, despite evidence that these crimes were perpetrated.

In an October 9, 2006 order, which effectively closed all of the major issues in the Punjab mass cremations case, the NHRC appointed a commissioner of inquiry in Amritsar, retired High Court judge K.S. Bhalla, to identify the remaining cremation victims from those acknowledged by the government, if possible, within eight months. Though the Bhalla Commission received a limited mandate, it could have devised an independent methodology for identifying victims, conducted its own investigations, and allowed for more evidence from victim families. Instead, it continued the NHRC practice of relying on the Punjab police for identifications or confirmations of victims of illegal cremations.

When the Supreme Court designated the NHRC as its body to investigate the human rights violations raised by the Punjab mass cremations case, it also entrusted the Central Bureau of Investigation (CBI) to look into the culpability of police officials. Over 10 years later, the petitioners have no information on whether there have been any prosecutions. In a submission before the NHRC in 1999, the CBI stated that it had registered 30 regular cases for investigation “out of which 12 cases have been finalised and...18 cases are pending investigation.” The number of cases registered for investigation by the CBI demonstrates the limits of the CBI inquiry, since it apparently found it necessary to register only 30 cases corresponding to 2,097 admitted illegal cremations. It also ignored the remaining vast majority of “disappearances” and extrajudicial executions that occurred throughout Punjab.

Even the pursuit for justice for the abduction, torture, and murder of human rights defender Jaswant Singh Khalra illustrates many of the challenges facing family members of victims in Punjab who wish to pursue legal remedies. The police threatened and illegally detained witnesses and filed false cases against some of them. It took 10 years before a judge finally convicted six Punjab police officers for their roles in the abduction and murder of Khalra. Further, despite eyewitness

testimony implicating then Director General of Police (DGP) KPS Gill in Khalra's illegal detention and murder, the CBI has yet to bring charges against him.

Worryingly, the Indian government cites the counterinsurgency operations in Punjab as a model for handling security crises and has replicated it to tackle law and order problems and armed conflicts in other parts of India. Security forces, provided *de facto* impunity by the state and protected by immunity laws, have continued to commit serious human rights abuses. Indian police often torture security detainees. Human rights groups have demanded proper investigations because of persistent and credible allegations that security forces also continue to construct faked encounters to kill suspects and ordinary persons, in the hope of receiving rewards and promotions.

Even when investigations identify those responsible for such grave human rights abuses, the government seldom publicly prosecutes or punishes the perpetrators. Although many government officials privately agree that the scale of human rights violations has increased, they resist any accountability efforts because they claim it would affect the morale of security forces operating in difficult circumstances. The Indian government has refused to acknowledge the systemic nature of the problem of impunity, and has done little to address the underlying problems that have led to abuse.

India must act to put an end to the institutional defects that foster impunity if it is serious about effective conflict resolution and lasting peace. In this report we focus on select cases in Punjab to illustrate these institutional defects. The past decade of proceedings concerning state crimes in Punjab have represented a series of refusals to acknowledge the widespread and systematic human rights violations, and the failure to apply international and Indian standards to provide reparations for these abuses. The cases we investigated demonstrate the failure of various government agencies including the police, the courts, the CBI, and the NHRC, to provide justice.

For instance, the Indian government points to its National Human Rights Commission as proof of its commitment to the protection of human rights. As the Punjab mass cremations case shows, the National Human Rights Commission chose to limit the mandate it received from the Supreme Court and refused to provide redress

according to Indian and international law. Yet, this case represents the best opportunity to challenge institutionalized impunity in India. Since this matter is still under the jurisdiction of the Supreme Court, which has extraordinary powers to remedy human rights violations, there is an opportunity to provide justice in this case and set a positive precedent for the redress of state abuses.

Victims and their families still demand redress from the Indian state, but they face severe challenges. These include prolonged trials, biased prosecutors, an unresponsive judiciary, police intimidation and harassment of witnesses—many of whom eventually turn hostile—and the failure to charge senior police officers despite evidence of their role in the abuses. None of the government officials who bear substantial responsibility for these atrocities have been brought to justice. Instead, the Indian government’s strategy appears to be to deny its crimes and wait out the demands for accountability.

Impunity for these atrocities exists despite the fact that a series of elections have been held in Punjab since 1992, and almost all of the primary political parties have taken turns in power. Political leaders have consistently portrayed abuses as aberrations and perpetrators as lone, rogue actors, despite evidence that senior police and civilian leaders knew about and may even have authorized the abuses. Further, each government has promoted officers accused of gross human rights violations during the counterinsurgency.

The Indian government consistently denies in its submissions to the United Nations special procedures that its security forces committed human rights abuses during the Punjab counterinsurgency. Officials have instead sometimes equated human rights groups with terrorists. The leader of Punjab’s counterinsurgency efforts, KPS Gill, has led the attack against the pursuit of justice, describing legal petitions as a weapon of terrorism—a “litigation gun” that has served as an “instrument of primary attack.”

Such an aggressive position from the government bodes ill for future progress on impunity, not just in Punjab, but in other parts of India, where human rights

defenders are coming under similar criticism, often accused of being the “enemy” if they speak against state forces.

Unless Indian officials find the political will to demand investigations, prosecutions, punishment, and reparations, human rights violations will continue. There is ample opportunity to take action in Punjab. Security has been restored. Further, strong documentation of violations has emerged and families continue to pursue accountability efforts. Although the Indian government claims that it took action against dozens of security officers for abuses in Punjab, many of these actions were limited to transfers or demotions. Criminal convictions, especially of senior officers implicated in abuse, have been rare. Further, the government has not addressed the thousands of abuses perpetrated.

India must begin to develop effective mechanisms to redress mass state crimes and the specific institutional defects that promote impunity. As the mass cremations case and other cases come before the Supreme Court, the court has the opportunity and responsibility to create new remedies to redress these violations. An effective remedy requires the state to take the necessary investigative, judicial, and reparatory steps to redress the violations. Reparations should include restitution, rehabilitation, compensation, and satisfaction and guarantees of non-recurrence. To redress the mass state crimes in Punjab, India will need to conduct comprehensive investigations, prosecute the most responsible officials in a timely manner, and provide and implement reparations for victims and their families.

We provide a remedial framework in this report to ensure an effective remedy for all persons whose rights were violated in Punjab during the counterinsurgency. We recommend a commission of inquiry that will investigate the entire scale and scope of the crimes, outline institutional responsibility, and identify those who planned and ordered the abuses; a special prosecutor’s office with fast track courts that will speedily and impartially investigate and prosecute systems crimes, including command structures and disciplinary practices; and a comprehensive reparations program, based on the full spectrum of rights violations. When the Punjab mass cremations case returns to the Supreme Court, the Court could implement such mechanisms in forging its remedy.

The Indian government should not believe that these crimes will fade into history. International law recognizes enforced disappearance as a crime for which any statute of limitations must take into account the continuous nature of the offense. Moreover, the state is under a continuing legal obligation to provide victims of rights violations and their families an effective remedy and reparations. The reputation of the Indian state as a gross human rights violator will persist until it fulfills these obligations.

Key recommendations

- The Indian government must publicly announce its opposition to human rights violations by making clear that torture, custodial killings, faked armed-encounter killings, and “disappearances” will not be tolerated under any circumstances.
- The government must demonstrate its opposition to such violations by holding criminally responsible officials who order, tolerate, or commit such practices. A good beginning will be to prosecute those found responsible for such abuses in Punjab, in particular the key architects of the crimes.
- The government should appoint a national commission to allow an impartial and independent investigation into allegations of torture and mistreatment and investigate the fate of all those who were “disappeared” or killed by state security forces in Punjab. All victims and their families should be able to register allegations of human rights abuses. Unlike numerous commissions already established to inquire into allegations of state-sponsored crimes, this one should be strictly time bound and able to access information from government records and victim families.
- All legal provisions providing effective immunity to members of the police and paramilitary forces should be repealed so that perpetrators of human rights violations can be brought to justice.
- The Indian government should create a Special Prosecutor’s Office and fast track courts to impartially investigate “system crimes” and prosecute the most responsible perpetrators.
- The Indian government should provide victims and their beneficiaries with reparations through a prompt and effective procedure that redresses the entire scope of violations.

- India is a member of the United Nations Human Rights Council and thus bound to cooperate with its mechanisms. The Indian government should issue standing invitations to relevant United Nations thematic human rights rapporteurs or working groups to investigate the allegations of human rights abuses in Punjab.
- The international community must condemn violations of human rights by Indian security forces and make future military aid and sales and all programs of military cooperation with India conditional to India taking significant steps to end impunity for its security forces.

II. Methodology

This report is based on a series of trips by Ensaaf researchers to Punjab, India, between January 2007 and April 2007, during which time they attended the hearings of the Bhalla Commission of Inquiry and conducted interviews with 45 families of victims of “disappearances” and extrajudicial executions. During this time, Ensaaf also interviewed human rights defenders and journalists and researched key legal cases. Additional research was conducted by telephone, email, and meetings with nongovernmental organizations (NGOs), activists, and lawyers outside of India. Throughout 2006, Ensaaf collected and researched thousands of legal records, news articles, and other documents. All efforts have been made to provide current information on unresolved and ongoing cases documented in this report as of September 2007. In certain cases, in order protect victims and others who fear reprisal by the Indian government for speaking about human rights abuses, identifying information has been withheld.

III. Background

Thousands of mothers await their sons even though some may know that the oppressor has not spared their sons' lives on this earth. A mother's heart is such that even if she sees her son's dead body, she does not accept that her son has left her. And those mothers who have not even seen their children's dead bodies, they were asking us: at least find out, is our son alive or not?¹

-Jaswant Singh Khalra, human rights activist, killed October 1995

The religious minority community of Sikhs represents two percent of India's population, and 60 percent of the population in the northern Indian state of Punjab.²

The 1980s in Punjab witnessed a decade-long insurgency by Sikh militants, fueled by failed attempts at procuring greater autonomy. Militants were responsible for numerous human rights abuses during the violent separatist struggle for an independent Khalistan, including the killings of Hindu and Sikh civilians, assassinations of political leaders, and the indiscriminate use of bombs leading to a large number of civilian deaths in Punjab and other parts of India.³ Under the cover of militancy, criminals began to coerce businessmen and landowners, demanding protection money. The Indian government responded with force, leading to numerous allegations of human rights violations.⁴

The Sikh militant movement in Punjab escalated after the Indian Army raided the Harmandir Sahib (Golden Temple) complex in Amritsar, Punjab—the center of Sikh

¹ Ensaaf, "Sardar Jaswant Singh Khalra," video report, 2006, <http://www.ensaaf.org/docs/khalravideo.php> (accessed April 13, 2007). This video is an edited recording, with subtitles, of a speech Khalra gave in April 1995 in Toronto, Canada, regarding his human rights investigations.

² Office of the Registrar General, India, "The First Report on Religion: Census of India," 2001, <http://www.censusindia.net/religiondata/Summary%20Sikhs.pdf> (accessed April 13, 2007).

³ Ramachandra Guha, *India After Gandhi*, (New Delhi: Picador), 2006, pp. 557-562. See also, Human Rights Watch, *India—Punjab in Crisis: Human Rights in India* (New York: Human Rights Watch, 1991), pp. 170-204.

⁴ According to official estimates, although these are disputed, more than 20,000 people were killed during the Punjab conflict including 11,690 civilians, 1714 policemen and 7,946 militants. Many more are still missing, suspected to be victims of enforced disappearances perpetrated by security forces.

religious and political life—on June 4, 1984, along with 41 other *gurdwaras*⁵ in Punjab.⁶ Scores of militants had retreated into the Harmandir Sahib complex.⁷

During the exchange of firing with the ensconced militants after troops entered the complex, and the subsequent executions by the Army, thousands were believed to have been killed, the majority of them Sikh pilgrims.⁸ The indiscriminate use of force led to heavy damages to the Harmandir Sahib complex which caused tremendous outrage among Sikhs, many of whom did not support the militant campaign for a separate Khalistan.⁹ On October 31, 1984, two Sikh members of Prime Minister Indira Gandhi's security staff assassinated her in Delhi. After the assassination, senior politicians and police officers orchestrated pogroms of Sikhs in various cities across India, killing at least 2,733 Sikhs in Delhi alone.¹⁰ Gangs of assailants burned Sikhs alive, raped women, and destroyed their *gurdwaras* and properties. The violence continued unabated for four days. None of the senior politicians or police officers identified by victims and eyewitnesses as organizing or perpetrating the massacres were held criminally responsible.¹¹ On September 28, 2007, 23 years after the pogroms, the CBI said it was closing its case against some Congress politicians because it was unable to find witnesses; most were dead or had refused to testify.¹²

⁵ A *gurdwara* is a Sikh house of worship.

⁶ Ram Narayan Kumar, Amrik Singh, Ashok Aggrwal, and Jaskaran Kaur, *Reduced to Ashes: The Insurgency and Human Rights in Punjab* (Kathmandu: South Asia Forum for Human Rights, 2003), p. 35.

⁷ Guha, *India After Independence*, p. 566.

⁸ Mark Tully and Satish Jacob, *Amritsar: Mrs. Gandhi's Last Battle* (London: J. Cape, 1985), pp. 184-5. Ram Narayan Kumar, "The Ghalughara: Operation Blue Star—A Retrospect," *Sikh Review* (Calcutta: June 2000).

⁹ Reporter Dhiren Bhagat described the destruction during a June 24, 1984 visit to the complex: "But no amount of white paint can cover the bullet marks on the marble and gold, and each morning as the packed mass of pilgrims pushes itself toward the shrine hundreds of hands stretch out to trace each bullet hole, to take in each defacement." Dhiren Bhagat, "Bhindrawale's Escape," in Salman Khurshid, ed., *The Contemporary Conservative* (New Delhi: Viking, 1989), p. 93, originally published in *The Spectator* (July 7, 1984). The Akal Takht was also reduced to rubble according to Kumar, "The Ghalughara".

¹⁰ An official government inquiry established that 2,733 Sikhs were murdered in Delhi. RK Ahooja, "Ahooja Report," 1987, <http://www.carnage84.com/official/ahooja/ahooja.htm> (accessed April 13, 2007).

¹¹ For a detailed analysis of the November 1984 pogroms, based on witness, survivor and government submissions to government commissions, see Jaskaran Kaur, *Twenty Years of Impunity: The November 1984 Pogroms of Sikhs in India* (Portland: Ensaaf, 2006), 2nd ed., <http://www.ensaaf.org/docs/20years.php> (accessed April 13, 2007). Several inquiry commissions were also ordered by the government, but despite some of them identifying prominent political leaders as having been involved in the attacks, there have been no convictions. Some police officials were convicted.

¹² "CBI Closes Case Against Tytler," *The Hindu*, September 29, 2007 <http://www.hindu.com/2007/09/29/stories/2007092962071800.htm> (accessed September 29, 2007).

In August 2005, the Justice G.T. Nanavati Commission had found that no proper investigation was done by the police even in cases registered by them.¹³

From May 11, 1987 to February 25, 1992, the Indian government dismissed the elected government in Punjab and imposed President's Rule, that is, direct governance by the central government.¹⁴ In addition, India's Parliament enacted counterinsurgency legislation that facilitated human rights violations and shielded security forces from accountability for these violations. The National Security Act was amended to allow for detention without trial for up to two years in Punjab for acts prejudicial to the security or defense of India.¹⁵ The Terrorist and Disruptive Activities (Prevention) Act of 1987 (TADA), provided the police with powers of search, seizure, and arrest.¹⁶ Under Section 15, a confession allegedly voluntarily made before a police officer, not lower in rank than a superintendent of police, was admissible in court against an accused (or co-accused, abettor or conspirator) for an offense under this Act.¹⁷ There were widespread allegations that police routinely used torture to obtain confessions from detainees and/or planted evidence as a means of detaining them under TADA. The Terrorist Affected Areas (Special Courts) Act of 1984 provided for special *in-camera* courts in "terrorist affected" areas that could conceal the identity of witnesses. In addition, a defendant charged with "waging war" had the burden of proving his innocence.¹⁸ The Armed Forces (Punjab and Chandigarh) Special Powers Act of 1983 empowered security forces to search premises and arrest people without warrant. Section 4 of the

¹³ BBC News, "Leaders 'incited' anti-Sikh riots," August 8, 2005, http://news.bbc.co.uk/2/hi/south_asia/4130962.stm (accessed August 13, 2007).

¹⁴ US State Department, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices—1990: India," p. 1437; US State Department, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices—1992: India," p. 1133. Article 356 of the Indian Constitution empowers the President and Parliament to bypass the elected state government and administer the state if the governor determines that "the Government of the State cannot be carried on in accordance with the provisions of this Constitution."

¹⁵ The National Security Act, 1980, <http://www.satp.org/satporgtp/countries/india/document/actandordinances/NationalSecurityact.htm> (accessed August 13, 2007). The National Security (Amendment) Act, 1987, http://www.mha.gov.in/acts-rules/National_Security%20Amendment_Act1987.pdf (accessed August 13, 2007). Also see US State Department, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices—1989: India," p. 1388.

¹⁶ Widely criticized for perpetrating human rights abuses, TADA was eventually allowed to lapse in 1995. The Prevention of Terrorism Act (POTA) which replaced TADA in 2001 was repealed in 2004 because of similar abuse.

¹⁷ The Terrorist and Disruptive Activities (Prevention) Act, 1987, <http://www.satp.org/satporgtp/countries/india/document/actandordinances/TADA.htm> (accessed June 5, 2007).

¹⁸ US State Department, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices—1989: India," p. 1389.

Special Powers Act allowed security forces to shoot to kill suspected terrorists, and Section 7 extended prosecutorial immunity to any action taken pursuant to the Act.¹⁹ TADA, too, provided immunity from prosecutions for any acts in “good faith done or purported to be done in pursuance of this Act.”²⁰

Indian security forces arbitrarily detained, tortured, executed, and “disappeared” tens of thousands of Sikhs in counterinsurgency operations.²¹ In the early 1990s, Director General of Police (DGP) KPS Gill expanded upon a system of rewards and incentives for police to capture and kill militants, leading to an increase in “disappearances” and extrajudicial executions of civilians and militants alike.²² The United States government described the Punjab police practice of faked encounter killings in 1993:

In the typical scenario, police take into custody a suspected militant or militant supporter without filing an arrest report. If the detainee dies during interrogation or is executed, officials deny he was ever in custody and claim he died during an armed encounter with police or security forces. Alternatively, police may claim to have been ambushed by militants while escorting a suspect. Although the

¹⁹ Armed Forces (Punjab and Chandigarh) Special Powers Act (1983), section 7. Section 7 states: “No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.”

²⁰ Section 26, The Terrorist and Disruptive Activities (Prevention) Act states: “No suit, prosecution or other legal proceeding shall lie against the Central Government or State Government or any other authority on whom powers have been conferred under this Act or any rules made thereunder, for anything which is in good faith done or purported to be done in pursuance of this Act or any rules made thereunder or any order issued under any such rule.”

²¹ Ram Narayan Kumar, et al., *Reduced to Ashes*, pp. 56, 58. For other reports on abuses by Indian security forces, see Human Rights Watch/Asia and Physicians for Human Rights, *Dead Silence; Human Rights Watch, India—Punjab in Crisis: Human Rights in India* (New York: Human Rights Watch, 1991); Amnesty International, “Human Rights Violations in Punjab; Use and Abuse of the Law,” May 1991, <http://www.amnestyusa.org/document.php?id=8D63FE02A44B98C8802569A600600B91> (accessed April 13, 2007); Amnesty International, “Punjab Police: Beyond the Bounds of Law,” April 1995, <http://www.amnestyusa.org/document.php?id=3D24566B3D60358B802569A500715046> (accessed April 13, 2007); Amnesty International, “Break the Cycle of Impunity and Torture in Punjab,” AI Index: ASA 20/002/2003, January 2003, <http://web.amnesty.org/library/Index/ENGASA200022003?open&of=ENG-IND> (accessed April 13, 2007).

²² Human Rights Watch/Asia and Physicians for Human Rights, *Dead Silence*, p. 2. In “Endgame in Punjab: 1988-1993,” Gill describes how he developed “a radical policy of postings and promotions.” KPS Gill, “Endgame in Punjab: 1988-1993,” 2001, South Asia Terrorism Portal, <http://www.satp.org/satporgtp/publication/faultlines/volume1/Fault1-kpstext.htm> (accessed May 4, 2007). See also, Shekhar Gupta and Kanwar Sandhu, “KPS Gill: True Grit,” *India Today* (April 15, 1993), p.64 (DGP Gill promoted the best officers).

detainee invariably dies in “crossfire,” police casualties in these “incidents” are rare.²³

In the majority of cases, the police abducted the victims of extrajudicial executions or “disappearances” in the presence of witnesses, often family members.²⁴ Family members of the victims further experienced multiple forms of abuse. A recent study conducted by Physicians for Human Rights (PHR) and the Bellevue/NYU Medical Center Program for Survivors of Torture revealed that family members of the “disappeared” were also tortured in over half of the cases they investigated.²⁵

Security forces further persecuted their victims through extortion and destruction of property, such as crops, livestock, and buildings. They obstructed justice by intimidating witnesses and lawyers, detaining and torturing family members, and failing to comply with court orders to release detainees.²⁶ In the 1994 report *Dead Silence: Legacy of Abuses in Punjab*, Human Rights Watch/Asia and PHR described the government counter-insurgency operations as “the most extreme example of a policy in which the end appeared to justify any and all means, including torture and murder.”²⁷ Hundreds of perpetrators have escaped accountability, including all of the major architects of these crimes.²⁸

²³ US State Department, Bureau of Democracy, Human Rights, and Labor, “Country Reports on Human Rights Practices—1993: India,” January 31, 1994, http://dosfan.lib.uic.edu/ERC/democracy/1993_hrp_report/93hrp_report_sasia/India.html (accessed April 13, 2007).

²⁴ Ram Narayan Kumar, et al., *Reduced to Ashes*, p. 175.

²⁵ Physicians for Human Rights and Bellevue/NYU Program for Survivors of Torture, “Evaluation of Litigants Pertaining to Writ Petition (CrI) No. 447/95 *Committee for Information and Initiative on Punjab v. State of Punjab*,” October 18, 2005, <http://www.ensaaf.org/pdf/reports/PHR-Bellevue.pdf> (accessed April 13, 2007), p. 7: “Torture of family members other than the decedent was reported in 56% of cases, with an average of 1.4 family members tortured per respondent and a maximum of nine.”

²⁶ Jaskaran Kaur, “A Judicial Blackout: Judicial Impunity for Disappearances in Punjab, India,” *Harvard Human Rights Journal*, vol. 15 (2002), p. 269. This article analyzes how the Punjab and Haryana High Court disposed of habeas corpus petitions filed on behalf of the disappeared from 1990 to 1997, as well as the personal experiences of the victims’ families, lawyers and justices involved. The study draws from 90 habeas petitions, as well as 30 interviews with survivors and 30 interviews with lawyers and retired and sitting justices.

²⁷ Human Rights Watch/Asia and Physicians for Human Rights, *Dead Silence*, p. 2.

²⁸ US State Department, Bureau of Democracy, Human Rights, and Labor, “Country Reports on Human Rights Practices—2006: India,” March 6, 2006, <http://www.state.gov/g/drl/rls/hrrpt/2006/78871.htm> (accessed April 13, 2007).

In early 1995, human rights activists Jaswant Singh Khalra and Jaspal Singh Dhillon, of the Akali Dal political party, used government crematoria records to expose over 6,000 secret cremations by the police in just one of then 13 districts in Punjab. They focused their investigations on illegal cremations, putting aside other possible ends of the victims' bodies, such as dismemberment or dumping in canals. Jaswant Singh Khalra described how the hesitation of family members to report "disappearances" led him and Dhillon to the cremation grounds: "[C]ountless mothers, countless sisters weren't ready to say that [their loved one was "disappeared"]". They said, "[I]f you take this issue further, and our son is still alive, they [the police] will kill him."²⁹ Thus, Khalra and Dhillon went to the cremation grounds:

We went and asked the employees: '...During this time, how many dead bodies did the police give you?' Some said we burned eight to 10 everyday. Some said there was no way to keep account; sometimes a truck full of bodies came, and sometimes two to four dead bodies came... [T]hey told us we could get the account from one place: 'The police gave us the dead bodies, and the municipal committee gave us the firewood.'³⁰

As Khalra began collecting information from the municipal records which gave the number of dead bodies brought by specific police officers and the amount of firewood purchased to burn the bodies, he also began to receive threats from the security forces. Eventually, the Punjab police abducted Jaswant Singh Khalra on September 6, 1995, secretly detained and tortured him for almost two months, and murdered him in late October 1995.³¹ His body was dumped in a canal. Six police officers were convicted of charges relating to his murder and abduction in November 2005, although a petition calling for charges against former DGP Gill remains pending.³²

²⁹ Ensaaf, "Sardar Jaswant Singh Khalra," video report, 2006, <http://www.ensaaf.org/docs/khalravideo.php> (accessed April 13, 2007).

³⁰ Ibid.

³¹ *CBI v. Ajit Singh Sandhu & Others*, Sessions Court, Case No. 49-T of 9.5.1998/30.11.2001, November 18, 2005. Copy on file with Ensaaf.

³² "High Court Case Filed against Former Police Chief KPS Gill for Murder of Human Rights Activist Jaswant Singh Khalra," Ensaaf press release, September 6, 2006, <http://www.ensaaf.org/docs/gillpetition.php> (accessed April 13, 2007).

The end to counterinsurgency operations has brought an end to systematic extrajudicial killings and “disappearances” in Punjab. However, the vast majority of these “disappearances” remain unresolved, and major perpetrators of the abuses from 1984 to 1995 have received promotions and currently occupy senior positions in the Punjab police. Their ongoing tenure and the impunity granted to almost all perpetrators have created a system that continues to facilitate custodial abuses, in particular illegal detention and torture.³³

The Indian government, the state government of Punjab, and Punjab police have all denied the extent of systematic “disappearances,” extrajudicial executions, and torture that occurred in Punjab during the counterinsurgency, at most admitting to a few errant abuses. Some officials privately justified the violations as necessary to combat the insurgency.

For instance, in response to reports by the United Nations (UN), the Indian Government has denied abuses committed during the counterinsurgency. At the 50th session of the UN Human Rights Commission in February 1994, Dr. Manmohan Singh, then India’s finance minister, downplayed widespread human rights abuses in India as “aberrations” that had occurred in confronting terrorism.³⁴ In response to 95 communications sent by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in 1992, the Indian government replied that the police acted within their code of conduct, and that every allegation of human rights abuse was “scrupulously investigated and most of them were found inaccurate, highly exaggerated or deliberately false.”³⁵ In response to allegations of “disappearances” submitted by the UN Working Group on Enforced or Involuntary Disappearances in 1994, the Indian government failed to acknowledge the systematic abuses and the

³³ See Amnesty International, “Break the Cycle.” On August 19, 2005, Justice R.L. Anand, a member of the Punjab State Human Rights Commission, stated that more than 80 percent of the complaints filed before the Commission were against Punjab policemen. “Cops need to amend ways, says Justice Anand,” *Tribune* (Chandigarh), Aug. 20, 2005, <http://www.tribuneindia.com/2005/20050820/punjab1.htm#14> (accessed April 13, 2007). Ensaaf, “Punjab Police: Fabricating Terrorism through Illegal Detention and Torture” (California: Ensaaf, 2005).

³⁴ “India not to submit to terrorism: Manmohan,” Press Trust of India, *Tribune* (Chandigarh), February 4, 1994, p.1.

³⁵ Report by the Special Rapporteur, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1992/72, E/CN.4/1993/46, December 23, 1992, <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/9350254955675d9f8025678boo442b24?Opendocument>, paras. 330-347 (accessed May 15, 2007).

judicial impunity protecting police perpetrators. The Working Group summarized the government's response:

The Government denied the allegations that there may be several thousand cases of disappearances in Punjab.... Scrupulous care had been taken to protect the rights of the individual under due process of law. Habeas corpus was available to all under the Indian judicial system in all circumstances. Wherever there was any suspicion of police excesses, action was taken. In Punjab, action had been taken against 210 police personnel.... All cases of alleged disappearance which were brought to the attention of police authorities were investigated.³⁶

Human rights groups, however, have consistently reported on the failure of the judicial system to address human rights abuses in Punjab.³⁷

During the counterinsurgency in Punjab, the Indian government also rejected reports by international human rights organizations on widespread abuses. In a letter issued to Amnesty International that denied the group permission to visit Punjab, the Indian Embassy stated: "The only turmoil in Punjab are the acts of violence by terrorists who have been indiscriminate in their butchery of innocents of all communities." The letter further stressed India's sovereignty and its antipathy to foreign interference in its domestic affairs.³⁸ In response to the 1991 Asia Watch report *Punjab in Crisis*, the Indian government denied the abuses, stating that it did not tolerate any violations of the law.³⁹

³⁶ Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/1995/36, December 21, 1994, <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/5d7027895994334b802566e1005606f9?OpenDocument>, para. 222 (accessed May 15, 2007).

³⁷ See, e.g., Jaskaran Kaur, "A Judicial Blackout: Judicial Impunity for Disappearances in Punjab, India," *Harvard Human Rights Journal*, vol. 15 (2002); See Amnesty International, "Break the Cycle of Impunity and Torture in Punjab," ASA 20/002/2003, January 19, 2003, <http://web.amnesty.org/library/Index/engASA200022003?OpenDocument&of=COUNTRIES%5CINDIA> (accessed April 22, 2007); Brad Adams, "Dead End in Punjab," *The Asian Age*, <http://www.hrw.org/english/docs/2004/12/17/india9909.htm> (accessed May 15, 2007).

³⁸ "Amnesty cannot visit Punjab," United News of India, *Tribune* (Chandigarh), March 22, 1989, p. 1, 16.

³⁹ "Indian leaders, Sikhs blamed in Punjab strife," Associated Press, *Toronto Star*, Aug 25, 1991, p.H8.

Punjab government institutions have equated human rights activists with terrorists and consistently used the insurgency to justify their actions. In the Punjab mass cremations case discussed below, the response of the Punjab police and government of Punjab has been to portray demands for a full accounting of abuses as negating the contributions of police in fighting insurgency.⁴⁰ Submissions by the state of Punjab have stressed the number of police killed in the insurgency.⁴¹ In a 2002 application before the National Human Rights Commission, the state of Punjab denied the abuses but also wrote:

The time frame under consideration of this Hon'ble Commission was an extraordinary time. It was necessary to take all steps to ensure that terrorists do not become role models for the impressionable youth and that they are not glorified and eulogized....An added area of concern for the State was to ensure that attempts of the invisible hand to ignite communal tensions were promptly contained.⁴²

The Punjab police have also associated human rights activists with Pakistan's Inter-Services Intelligence [ISI] such as in this deposition which claimed:

[C]ertain non-governmental organizations working in the area of preservation, promotion and sensitisation of the public to human rights issues, have undertaken a sustained and well financed campaign of disinformation to malign the image of the Punjab Police so that the low intensity war of terrorism conceived, designed and fuelled by ISI continues unabated.⁴³

⁴⁰ Darshan Singh Mann, SP(D), Additional Affidavit on behalf of respondents No. 4 to 6 (SSPs of Amritsar, Tarn Taran, and Majitha), National Human Rights Commission, Reference Case No. 1/97/NHRC, received August 14, 1998, para. 2: "[P]etitioners are trying to portray the Punjab Police as 'trigger-happy,' 'blood thirsty' with an extra legal style of functioning, who were out to eliminate innocents. This amounts to negating the contribution of hundreds of valiant police officers who laid down their lives while fighting terrorism." Copy on file with Ensaaf.

⁴¹ See, e.g., *ibid.* See also State of Punjab, "Application for re-framing of points of substance," Volume II-Documents 1, "Insight to some of the martyred police officers," National Human Rights Commission, Reference Case No. 1/97/NHRC, received August 26, 2002. Copy on file with Ensaaf.

⁴² "Application for re-framing of points of substance," para. 11e.

⁴³ Darshan Singh Mann, SP(D), Additional Affidavit on behalf of respondents No. 4 to 6, para. 2.

In requesting the Supreme Court to rule in their favor, the Punjab police have attempted to gain sympathy by referencing “the barrage of writ petitions” they are facing:

It is respectfully submitted that a large number of writ petitions are being filed on bogus charges. Human rights activists are coaxing people and even threatening them to file writ petitions by incorporating concocted facts. Thus the police is unable to rivet its attention against the terrorists in full measure.⁴⁴

KPS Gill, director general of police in Punjab at the height of the abuses, has led the campaign against police accountability. His writings and speeches have consistently referred to human rights activists as terrorists or agents of Pakistan’s ISI. He has further equated terrorism with the filing of writ petitions. In “The Litigation Weapon Against the Police and the State,” he wrote:

Far more insidiously, however, at some time during the course of the terrorist movement, the weapon of the writ petition was discovered and deployed. A period followed thereafter, when both the Kalashnikov and the writ petition were used in tandem.... But elements unhappy with the return of peace in the State advanced the litigation gun from its status of a support weapon to an instrument of primary attack. By now, this weapon had been upgraded from an inefficient single-shot gun to an automatic rapid-fire implementation of war.... The distortion and manipulation of the legal process and the coordinated orchestration of the media that is being resorted to by an utterly compromised ‘human rights’ lobby are an integral part of a propaganda war aimed against peace and stability.⁴⁵

⁴⁴ Ibid., para. 12.

⁴⁵ KPS Gill, “By other means: The litigation weapon against the police and the state,” *Frontline*, June 27, 1997, p.115.

Gill has consistently denied the systematic aspect of the abuses, at most admitting to aberrations and claiming that he has regularly disciplined his subordinates.⁴⁶ Gill discusses these writ petitions as a threat to national security and a strategy of “front organisations of the defeated terrorist movement.”⁴⁷ He further blamed the alleged suicide of senior police officer Ajit Singh Sandhu—responsible for Khalra’s abduction, torture and murder—on human rights activists:

Had this [writ petition] assault no motive other than justice, one would merely say, ‘Let the law take its own course.’ But when it claimed its first life, that of SSP Ajit Singh Sandhu, I was shaken by the success of those who had failed so abjectly against us in open conflict. The war they lost in the field had been resumed with vigour as a propaganda war. Through this exaggerated barrage of petitions, these forces are pursuing a dual strategy to immobilize and demoralize the police and to create among the people enjoying the fruits of a hard-won peace a sense of oppression that the forces can exploit to their perfidious ends.⁴⁸

In 1997, after SSP Sandhu’s suicide, Gill wrote a letter to Prime Minister I.K. Gujral, in which he described the legal cases proceeding against SSP Sandhu and other policemen as “an unprecedented and unprincipled inquisition,” “a sustained and vicious campaign of calumny, of institutional hostility and State indifference,” and public interest litigation as “the most convenient strategy for vendetta.”⁴⁹

This refusal to acknowledge crimes committed by security forces, and in fact, choosing instead to condemn the messenger, has only added to the culture of impunity in India, where extrajudicial means to end insurgencies or punish alleged terrorists have claimed numerous lives, many of them innocent.

⁴⁶ Praveen Swami, “Bad apples are everywhere,” *Frontline*, November 18, 1994, p. 40.

⁴⁷ KPS Gill, “Man in Uniform Demands Justice,” *Hindustan Times*, June 8, 2001.

⁴⁸ KPS Gill, “By other means: The litigation weapon against the police and the state,” *Frontline*, June 27, 1997, p.115.

⁴⁹ KPS Gill, “Letter to Prime Minister I.K. Gujral on the Death of Ajit Singh Sandhu, May 20, 1997,” available at <http://www.satp.org/satporgtp/kpsgill/terrorism/97PM.htm> (accessed May 15, 2007).

IV. International and Domestic Legal Standards and Norms

We simply want justice and we want those people to be punished...

-Gurcharan Singh, father of victim

An enforced disappearance occurs when officials affiliated with the government arrest, detain, or abduct an individual, and then refuse to acknowledge the deprivation of the individual's liberty or disclose his fate or whereabouts.⁵⁰ The practices of "disappearances" and extrajudicial executions violate several human rights, including the right to life, the right to liberty and security of the person, the right to a fair and public trial, as well as the prohibition on torture and cruel, inhuman, and degrading treatment or punishment. An enforced disappearance is a continuing crime until the "disappearance" is resolved.

"Impunity" means the impossibility, in law or in fact, of holding perpetrators accountable.⁵¹ De facto impunity takes place when the state fails to prosecute human rights abusers for lack of capacity or political will. De jure impunity occurs when laws or regulations providing immunity or amnesty make it difficult or impossible to prosecute a perpetrator for human rights abuses. Both forms of impunity prevail in India and effectively shield perpetrators from accountability, leading to more human rights violations and undermining faith in the government and security forces.⁵²

⁵⁰ The International Convention for the Protection of All Persons from Enforced Disappearance which is currently open for signature, defines "enforced disappearance" as: "the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law." art. 2, <http://www.ohchr.org/english/law/disappearance-convention.htm>. India was one of the initial signatories to the convention, signing the treaty on February 6, 2007. As a signatory, India must "refrain from acts which would defeat the object and purpose of [the] treaty." Vienna Convention on the Law of Treaties (1969), art. 18.

⁵¹ Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity ("Impunity Principles"), U.N. Doc. E/CN.4/2005/102/Add.1, February 8, 2005, adopted by the UN Commission on Human Rights in Resolution E/CN.4/2005/81, April 15, 2005.

⁵² Code of Criminal Procedure, 1973, sections 45 and 197. These sections require the prosecutor to apply for "prosecution sanction," or permission from the state or central government, before instituting any proceedings against a public servant or member of the armed forces. This requirement has prevented and halted cases against senior officers charged with serious human rights abuses.

The right to an effective remedy

To combat impunity, international law, including treaties to which India is party, guarantee the right to an effective remedy for victims of gross human rights violations, including “disappearances,” extrajudicial executions, and torture.⁵³ A victim’s right to an effective remedy obligates the state to take the necessary investigative, judicial, and reparatory steps to redress the violation and address the victim’s rights to knowledge, justice, and reparations.⁵⁴ The state is under a continuing obligation to provide an effective remedy; there is no time limit on legal action and the right cannot be compromised even during a state of emergency.⁵⁵

International human rights standards provide that states investigate allegations of human rights violations with a focus on identifying perpetrators and holding them to account.⁵⁶ Every victim is entitled to information on the particular circumstances and underlying causes leading to his victimization.⁵⁷ The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions call

⁵³ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), entered into force March 23, 1976, art. 2. See also International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), entered into force January 4, 1969, art. 6.

⁵⁴ See Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 15 (“States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights” protected by the ICCPR). See also Impunity Principles, principle 1; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (“Reparations Principles”), adopted December 16, 2005, G.A. res. 60/147, U.N. Doc. A/RES/60/147 (2005), principle 11.

⁵⁵ See Human Rights Committee, General Comment 29, States of Emergency (art. 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 14 (“Even if a State party, during a state of emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of its procedures governing judicial or other remedies, the State party must comply with the fundamental obligation, under article 2, paragraph 3, of the [ICCPR] to provide a remedy that is effective.”). See also The Redress Trust, “Enforcement of Awards for Victims of Torture and Other International Crimes,” May 2006, http://www.redress.org/publications/master_enforcement%2030%20May%202006.pdf (accessed April 22, 2007) pp.10-11.

⁵⁶ See Human Rights Committee, General Comment 29, States of Emergency (art. 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 15 (“A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant”); Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Principle 3(b) (“Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law”); see also European Court of Human Rights, *Ibrahim Aksoy v. Turkey*, Judgment of 18 December 1996, 100/1995/606/694, para. 98. The ECHR ruled that “the notion of an effective remedy” for torture in Article 13 of the European Convention includes “a thorough and effective investigation capable of leading to the identification and punishment of those responsible.”

⁵⁷ Reparations Principles, principle 24.

upon states to remove officials implicated in these crimes from direct or indirect power over the complainants and witnesses, as well as those conducting the investigation.⁵⁸ In cases of enforced disappearance, the evidence necessary to establish liability is often under the exclusive control of the state, which has an incentive to conceal this evidence, and thus international human rights bodies have held circumstantial, documentary, and testimonial evidence to be admissible in their investigations of “disappearances.”⁵⁹

States are obligated to bring perpetrators of serious criminal offenses to justice.⁶⁰ This obligation is independent of the wishes of victims, who for various reasons— including being subject to intimidation—may not press for prosecutions.⁶¹ Significantly, the UN Human Rights Committee in its comments to India’s report prepared under the International Covenant on Civil and Political Rights (ICCPR), urged “that judicial inquiries be mandatory in all cases of death at the hands of the security and armed forces and that the judges in such inquiries...be empowered to direct the prosecution of security and armed forces personnel.”⁶² In no circumstances, including a state of war or public emergency, shall immunity from prosecution be granted to alleged perpetrators of extra-judicial executions.⁶³ The enforcement of judgments is also a crucial aspect of the right to an effective remedy.⁶⁴

⁵⁸ Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, principle 15.

⁵⁹ See e.g. *Maria del Carmen Almeida de Quinteros et al. v. Uruguay*, Communication No. 108/1981, UN Doc. CCPR/C/19/D/107/1981 (1983); *Irene Bleier Lewenhoff and Rosa Valino de Bleier v. Uruguay*, Communication No. 30/1978, U.N. Doc. CCPR/C/OP/1 (1985); *Velasquez Rodriguez*, Inter-Am. Ct. H.R. Ser. C No. 4. This issue is discussed in Human Rights Watch, “India – Punjab Amicus Curiae Brief,” (2003), <http://www.hrw.org/pub/amicusbriefs/punjab.pdf> (accessed April 22, 2007), Argument II.

⁶⁰ See Human Rights Committee, General Comment 31, para. 18 (“States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations [of human rights recognized as criminal] could in and of itself give rise to a separate breach of the Covenant.”).

⁶¹ See The Redress Trust, “Implementing Victims’ Rights: A Handbook on the Basic Principles and Guidelines on the Right to a Remedy and Reparation,” March 2006, <http://www.redress.org/publications/Reparation%20Principles.pdf> (accessed April 22, 2007), p. 24.

⁶² Concluding Observations of the Human Rights Committee: India, August 4, 1997, U.N. Doc No. CCPR/C/79/Add.81, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/85e8bbf07b5dbdc88025652b005538bd?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/85e8bbf07b5dbdc88025652b005538bd?Opendocument) (accessed May 20, 2007), para. 21.

⁶³ See Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, principle 19.

⁶⁴ See The Redress Trust, *Enforcement of Awards*, pp. 6-7, citing Inter-American Court of Human Rights, *Baena-Ricardo Case*, judgment of 28 November 2003, Inter-Am. Ct. H.R., (Ser. C) No. 104 (2003), para. 82, cited in Shelton, *Remedies in International Law* (Oxford: Oxford University Press, 2005) p. 383.

International law sets out various reparations mechanisms. According to the Human Rights Committee, the ICCPR:

requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of [enforcing the ICCPR] is not discharged. ... [T]he Covenant generally entails appropriate compensation. ... [W]here appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.⁶⁵

Superior responsibility

Combating impunity requires the identification of the specific perpetrators of the violations. The doctrine of superior responsibility imposes liability on superiors—with either *de jure* or *de facto* command—for the unlawful acts of their subordinates, where the superior knew or had reason to know of the unlawful acts, and failed to

⁶⁵ Human Rights Committee, General Comment 31, para. 16. Others have delineated four components of reparations: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition. Restitution is described as the restoration of the victim, whenever possible, to the original situation prior to the occurrence of the violation. This includes restoration of liberty, citizenship, employment, property, or one's place of residence. Compensation covers material losses, such as medical expenses and the loss of earnings, as well as economically assessable moral damage, such as pain and suffering. Rehabilitation includes legal, social, medical, and psychological care and services. Satisfaction and guarantees of non-repetition include measures such as the full public disclosure of the truth; the search for the whereabouts of the "disappeared"; an official declaration restoring the dignity, reputation, and rights of the victim and persons closely connected to the victim; and review of laws that contribute to or allow gross violations of human rights. Reparations must be "proportional to the gravity of the violations and the harm suffered." Further, reparations are premised on the principle of non-discrimination, where all victims who have suffered like violations receive like reparations. See *Reparations Principles*, principles 19-23.

prevent and/or punish those acts.⁶⁶ The doctrine of superior responsibility is well-established and is part of customary international law.⁶⁷

A superior possesses the requisite culpable mental state for the imposition of criminal liability when he has actual knowledge or “reason to know” that his subordinates were committing crimes.⁶⁸ A superior’s actual knowledge is “established through direct or circumstantial evidence.”⁶⁹ The second type of knowledge—“had reason to know”—requires the superior to remain informed about the activities of his subordinates; he cannot willfully blind himself.⁷⁰ The superior can be liable if he possessed any information that should have put him on notice of crimes committed or about to be committed by his subordinates. Although the superior cannot be expected to “perform the impossible,” he would be held criminally liable for failing to take actions within his “material possibility.” The lack of formal legal competence does not preclude responsibility.⁷¹

Indian law

International law not inconsistent with municipal law is part of India’s law.⁷² The Supreme Court has repeatedly stressed the respect given to the national

⁶⁶ *Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landzo*, International Criminal Tribunal for the former Yugoslavia (ICTY), Case No. IT-96-21-T, November 16, 1998, para. 346 (Celebici). In Celebici, the Trial Chamber of the ICTY traced the development of the concept of superior responsibility from its first international judicial recognition in the Nuremberg and Tokyo trials of World War II. The Trial Chamber broke down the principal of superior responsibility into three essential elements: (i) the existence of a superior-subordinate relationship; (ii) the superior knew or had reason to know that the criminal act was about to be or had been committed; and (iii) the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof.

⁶⁷ *Ibid.* at para. 333., affirmed in part and reversed in part, *Prosecutor v. Delalic et al.*, ICTY, Judgment (Appeals Chamber), February 20, 2001 (“Delalic Appeals Chamber”).

⁶⁸ *Ibid.*, at 383.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, at 387-388.

⁷¹ *Ibid.*, at 395.

⁷² *Vellore Citizens Welfare Forum v. Union of India*, INSC 1050 (1996). The Supreme Court held that “the rules of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law.” As per Article 372 of India’s Constitution, all laws in force in the Indian territory before the commencement of the Constitution continue in force. India follows England’s common law and thus designates the same status to customary international law in domestic law.

implementation of international law, and the need to accommodate international law “even without express legislative sanction.”⁷³ Moreover, the Supreme Court has held that international law can be incorporated into the fundamental rights under the Indian Constitution.⁷⁴ Thus, the standards of international human rights law, including the right to an effective remedy in cases of “disappearances” and extrajudicial executions, are part of the fundamental rights protected by the Indian Constitution.

When fundamental rights are at stake, Article 32 of the Indian Constitution gives the Supreme Court the power to forge new remedies and fashion new strategies designed to enforce these rights.⁷⁵ Its power is both injunctive and remedial.⁷⁶ For example, in addition to awarding compensation for illegal detention, the Supreme Court has issued detailed mandatory directions that all law enforcement officials must comply with when they arrest or detain any person.⁷⁷ These requirements were issued to supplement constitutional and statutory safeguards. The court has also established guidelines and norms not addressed in existing legislation.⁷⁸ In creating commissions, the Supreme Court has stressed that the proceedings must be appropriate not in terms of any specific form, but in reference to the purpose to enforce fundamental rights.⁷⁹ The commission can even diverge from the adversarial procedure⁸⁰ to allow for a procedure more sensitive to victims’ rights in situations of reparation for gross human rights violations. The court also has the power to issue directions to the state, including the taking of positive action such as augmenting the investigative machinery and setting up new courts in order to ensure a speedy trial.⁸¹

⁷³ *Gramophone Co. of India Ltd v. Birendra Bahadur Pandey*, AIR 1984 SC 667, 673.

⁷⁴ *People’s Union for Civil Liberties & Anr v. Union of India*, (1997) 3 SCC 433.

⁷⁵ See *Bandhua Mukti Morcha v. Union of India and others*, (1984) 3 SCC 161; *M.C. Mehta v. Union of India*, AIR 1987 SC 1086.

⁷⁶ *M.C. Mehta v. Union of India*, AIR 1987 SC 1086.

⁷⁷ *DK Basu v. State of West Bengal*, (1997) 1 SCC 416 at 438, para. 35.

⁷⁸ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241, para. 11.

⁷⁹ *Bandhua Mukti Morcha v. Union of India and others*, para. 11.

⁸⁰ *Bandhua Mukti Morcha v. Union of India and others*, para. 13.

⁸¹ *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar*, AIR 1979 SC 1369, 1979 SCR (3)1276.

All of the individuals interviewed for this report deplored the lack of an effective remedy for “disappearances” and extrajudicial executions by the Punjab police. They repeatedly stressed that the Indian government’s offers of compensation did not equal justice. Many viewed the offer of money, in the absence of justice, as an effort to buy their silence. For the family members of victims, justice includes establishing the truth of what happened to their loved ones and holding perpetrators accountable for their crimes.

V. Failure of Justice

He was just a boy. I want to know what they did with him.

—Darshan Kaur, mother of victim

The cases detailed in this chapter highlight different aspects of the impunity that has prevailed since the Punjab counterinsurgency operations from 1984 to 1995. These cases reflect the failure of various government institutions including the police, the judiciary, the Central Bureau of Investigation, and the National Human Rights Commission to ensure accountability and redress for gross human rights violations.

Many observers had hoped that the Punjab mass cremations case described in detail immediately below would redress the systematic “disappearances” and extrajudicial executions perpetrated by Indian security forces. After 11 years of proceedings that have excluded victim participation, relied solely on police admissions, failed to identify responsible officials, and offered only limited compensation to a small subset of victims' families, many victims' families now feel the government condones the abuses and the denial of justice.

Another case detailed below, that of murdered human rights defender Jaswant Singh Khalra, demonstrates the hurdles families face in pursuing individual cases, as well as the government's reluctance to pursue investigations and charges against the alleged architects of these systematic abuses. This case, and the others we discuss in this chapter, highlights biases within the prosecuting authority, the challenges brought on by prolonged trials, the police's role in the destruction of evidence and fabrication of records, and police intimidation and abuses suffered by survivors of those killed by the police.

In each case, the families continue to call for justice for the “disappearance” or extrajudicial execution of their loved one. These families have stated that they cannot move forward in their lives without knowledge, justice, and reparations.

A. NHRC and the Punjab mass cremations case

Human rights groups have uncovered basic facts of the gross human rights violations perpetrated by Indian security forces in Punjab during the counterinsurgency, including details of the destruction of evidence through thousands of secret cremations. In 1996, after reviewing evidence of mass cremations, the Supreme Court appointed the National Human Rights Commission (NHRC) to address these violations.

During the past decade of the proceedings before the NHRC, the Commission has failed to apply Indian or international human rights standards to investigate and provide proper reparations for these abuses. Although the NHRC has failed to provide a remedy for these abuses, because the Supreme Court retains jurisdiction in this case and will review the NHRC's actions, it will provide the ultimate resolution of the mass cremations case that will set a precedent in India on redressing mass state crimes.

In 1995, after human rights activist Jaswant Singh Khaira released official records exposing the mass secret cremations perpetrated by the Punjab police in Amritsar district, the Committee for Information and Initiative on Punjab (CIIP) moved the Supreme Court to demand a comprehensive inquiry into extrajudicial executions throughout Punjab.⁸² After Punjab police “disappeared” Jaswant Singh Khaira, the Supreme Court eventually ordered the Central Bureau of Investigation (CBI), India's premier investigative agency, to investigate these crimes.⁸³

The CBI submitted its final report on December 9, 1996,⁸⁴ limiting its investigations to Amritsar district. The CBI's report, which the Supreme Court sealed, listed 2,097 illegal cremations at three cremation grounds of Amritsar district—then one of 13

⁸² Writ Petition (Crl.) No. 447 of 1995, *Committee for Information and Initiative on Punjab v. State of Punjab and Others*, April 3, 1995 (Writ Petition (Crl.) No. 447 of 1995). Copy on file with Ensaaf.

⁸³ Order of the Supreme Court dated November 15, 1995, Writ Petition (Crl.) No. 497 of 1995, *Paramjit Kaur v. State of Punjab & Others*, with Writ Petition (Crl.) No. 447 of 1995. Copy on file with Ensaaf.

⁸⁴ Order of the Supreme Court dated December 11, 1996, Writ Petitions (Crl.) Nos. 497 and 447 of 1995. Copy on file with Ensaaf.

districts in Punjab.⁸⁵ Khalra himself, however, had discussed over 6,000 cremations in Amritsar district.⁸⁶ Moreover, CIIP had stated in its original writ petition that interviews with cremation ground workers disclosed that multiple people were often cremated with the firewood normally required for completely burning one body.⁸⁷ Thus, many more than 2,097 bodies could have been cremated.

In December 1996, the Supreme Court referred the mass cremations case to the National Human Rights Commission (NHRC or “Commission”), observing that the CBI’s inquiry report disclosed a “flagrant violation of human rights on a mass scale.” In this case, the Supreme Court appointed the NHRC as its *sui generis* body, with the extraordinary powers of the Supreme Court under Article 32 of the Indian Constitution to redress fundamental human rights violations. The Supreme Court requested the NHRC “to have the matter examined in accordance with law and determine all the issues which are raised before the Commission by the learned counsel for the parties,” and also ordered that any compensation awarded by the NHRC would be “binding and payable.”⁸⁸ Thus, the NHRC had the powers to forge new remedies and fashion new strategies to enforce fundamental human rights.⁸⁹

The Supreme Court also entrusted the CBI with investigations into the culpability of police officials in the secret cremations case,⁹⁰ leaving “all the issues which are raised before the Commission” to the NHRC.⁹¹

Unfortunately, throughout the decade-long proceedings, the NHRC ignored the fundamental rights violations that had occurred in Punjab and thus shielded

⁸⁵ Order of the Supreme Court dated December 12, 1996, Writ Petitions (Crl.) Nos. 497 and 447 of 1995. Copy on file with Ensaaf.

⁸⁶ Ensaaf, “Sardar Jaswant Singh Khalra,” video report, 2006, <http://www.ensaaf.org/docs/khalravideo.php> (accessed April 13, 2007).

⁸⁷ Writ Petition (Crl.) No. 447 of 1995, para. 5x-5xii.

⁸⁸ Order of the Supreme Court dated December 12, 1996.

⁸⁹ See *Bandhua Mukti Morcha v. Union of India and others*, (1984) 3 SCC 161; *M.C. Mehta v. Union of India*, AIR 1987 SC 1086.

⁹⁰ Order of the Supreme Court dated November 15, 1995, Writ Petition (Crl.) No. 497 of 1995, *Paramjit Kaur v. State of Punjab & Others*, with Writ Petition (Crl.) No. 447 of 1995. Copy on file with Ensaaf.

⁹¹ Order of the Supreme Court dated December 12, 1996.

perpetrators from accountability. It refused to allow a single victim family to testify and failed to conduct any independent investigations towards identifying responsible officers. Instead, the NHRC based its findings on information provided by the Punjab police, the perpetrators of the crimes. Furthermore, the Commission refused to consider mass cremations, extrajudicial executions, and “disappearances” throughout the rest of Punjab. Despite having wide powers under Article 32, the NHRC’s actions were restrictive even when compared to steps it has taken in other cases under its normal limited powers. For example, the NHRC has often sent its own investigatory teams *sua sponte* to examine violations based on news reports, and has even filed lawsuits to challenge judgments and request the transfer of trials relating to the Gujarat pogroms.⁹²

In its over ten years of proceedings in the Punjab mass cremations case, the NHRC compensated the next of kin of 1,051 individuals for the wrongful cremation of their loved ones, where the Punjab police did not follow the rules for proper cremations, and 194 individuals for the violation of the right to life, where the Punjab police admitted custody prior to death but did not admit liability for the unlawful killing.

In October 2006, the NHRC appointed retired Punjab and Haryana High Court Justice K.S. Bhalla as a commissioner for conducting an inquiry in Amritsar (“Bhalla Commission” or “Amritsar Commission of Inquiry”) to identify the remaining cremation victims from the CBI list under its consideration, if possible, within eight months.⁹³

From 1997 to 1999, the Punjab mass cremations litigation stalled over the powers of the NHRC to adjudicate the case. The main question was whether the Commission

⁹² See e.g., “NHRC to send team to Assam to look into the living conditions in refugee camps,” <http://nhrc.nic.in/dispArchive.asp?fno=1478> (accessed October 3, 2007); “Nithari: NHRC awaits govt report,” *Tribune* (Chandigarh), Jan. 16, 2007. W.P. (Crl.) No. 109 or 2003, *National Human Rights Commission v. State of Gujarat & Ors.*; W.P. (Crl.) No. 194-202 or 2003 & 326-329 of 2003, *National Human Rights Commission v. State of Gujarat & Ors.*, “India: Gujarat -- Denial of Justice for Victims,” Amnesty International press release, Feb. 26, 2004, available at <http://web.amnesty.org/library/index/ENGASA200032004>.

⁹³ NHRC Order dated October 9, 2006, Reference Case No. 1/97/NHRC, <http://nhrc.nic.in/Punjab.htm#9th%20October,%202006> (accessed April 20 2007). The Bhalla Commission held its last hearing on June 29, 2007 and presumably submitted its final report to the NHRC. According to the NHRC’s October 30, 2006 order, its final report was due June 30, 2007. NHRC Order dated October 30, 2006, Reference Case No. 1/97/NHRC, para. 14. Copy on file with Ensaaf. Throughout its proceedings, it identified duplicate records and reduced the number of cases in its mandate to 800 unidentified cremations. Bhalla Commission order dated May 12, 2007, Reference Case No. 1/97/NHRC and CI/NHRC/2006.

possessed the Supreme Court's powers under Article 32 of the Constitution, or if the Commission was bound by the act that created it, the Protection of Human Rights Act, 1993 (PHRA).⁹⁴ The PHRA limits the Commission's oversight in its regular operations to violations that occurred within a year of the filing of the complaint, grants only recommendatory powers to the NHRC, and prevents it from investigating abuses by armed forces, among other restrictions.⁹⁵ In August 1997, the NHRC stated that it possessed the court's Article 32 powers in this case, quoting a key Supreme Court case on Article 32:

We have therefore to abandon the laissez faire approach in the judicial process particularly where it involves a question of enforcement of fundamental rights and forge new tools, devise new methods and adopt new strategies for the purpose of making fundamental rights meaningful for the large masses of people...

It is for this reason that the Supreme Court has evolved the practice of appointing commissions for the purpose of gathering facts and data in regard to a complaint of breach of a fundamental right.⁹⁶

That same day, the NHRC issued a second order on proceedings, proposing the invitation of claims by public notice and inquiries "to ascertain whether the deaths and subsequent cremations or both were the results of acts which constituted violation of human rights or constituted negligence on the part of the State and its authorities."⁹⁷ The Union of India litigated the NHRC's powers back to the Supreme Court, challenging its jurisdiction over the mass cremations case.⁹⁸ In 1998, the Supreme Court held that in the Punjab mass cremations case, the NHRC possessed

⁹⁴ NHRC Order dated January 28, 1997, Reference Case No. 1/97/NHRC. Copy on file with Ensaaf.

⁹⁵ Protection of Human Rights Act, 1993, <http://nhrc.nic.in/HRAAct.htm> (accessed April 20, 2007), Rules 18, 19, 36(2).

⁹⁶ NHRC Order dated August 4, 1997, Reference Case No. 1/97/NHRC, quoting *Bandhua Mukti Morcha v. Union of India & Others*, 1984(3) SCC 16. Copy on file with Ensaaf.

⁹⁷ NHRC Order on Proceedings dated August 4, 1997, Reference Case No. 1/97/NHRC. Copy on file with Ensaaf.

⁹⁸ A Petition for Clarification/Directions filed on behalf of Applicant-Union of India, Writ Petitions (Crl.) Nos. 497 and 447 of 1995. Copy on file with Ensaaf. The Union of India wanted the PHRA's one-year statute of limitation to apply, which would have closed the NHRC inquiry.

the court's Article 32 powers, the NHRC was not limited by the Protection of Human Rights Act, and the Supreme Court retained final jurisdiction over the case.⁹⁹

Although this order meant that the NHRC was fully equipped to investigate the widespread and systematic human rights abuses that had occurred throughout Punjab because it possessed the extraordinary powers of Article 32, in January 1999, the NHRC pronounced an order on the scope of its inquiry, limiting itself to the 2,097 cremations stated by the CBI to have occurred in three crematoria in Amritsar district, and divided the cremations into three lists of identified, partially identified, and unidentified cremations.¹⁰⁰ The limited mandate meant the NHRC would only consider victims of unlawful killings whose bodies were: (1) disposed of through cremation, and not other methods; (2) cremated in one of the three crematoria investigated by the CBI in one of then 13 districts in Punjab; (3) cremated between 1984 and 1994; and (4) included in the CBI's list of 2,097 cremations.

The CIIP challenged this restriction several times before the NHRC and ultimately to the Supreme Court.¹⁰¹ The NHRC insisted on its limited mandate and the Supreme Court refused to intervene at that stage.¹⁰² The NHRC thus ignored its Article 32 powers in this case.¹⁰³

⁹⁹ Order of the Supreme Court dated September 10, 1998, Criminal Misc. Petition Nos. 6674 of 1997 and 4808 of 1998, Writ Petitions (Crl.) Nos. 497 and 447 of 1995. Copy on file with Ensaaf.

¹⁰⁰ A cremation is "identified" if the name of the decedent, his father's name, and his residence are known. A cremation is "partially identified" if two out of the three above pieces of information are known. If none of these fields are known, the cremation is "unidentified." The NHRC based its understanding of its mandate on technicalities, stating that the CIIP's petition only attached records regarding secret cremations at two cremation grounds in Amritsar district, and not other districts, and that the Supreme Court intended it only to investigate those 2,097 cremations. NHRC order dated January 13, 1999, Reference Case No. 1/97/NHRC. Copy on file with Ensaaf.

¹⁰¹ Application to NHRC by Petitioners in Writ Petition 447 of 1995 Seeking Review of Order dated January 13, 1999 (Received January 28, 1999); Application by Petitioners in Writ Petition No. 447 of 1995 Seeking Clarification and Directions with Reference to Orders dated August 4, 1998 [sic], January 13, 1999 and March 24, 1999 (Received February 1, 2001); Application for Clarification of Scope of the Reference Made by this Hon'ble Court to the National Human Rights Commission in the above Writ Petition vide Order dated December 12, 1996, Writ Petition Nos. 497 of 1995 and 447 of 1995 (Dated August 23, 1999). Copies on file with Ensaaf.

¹⁰² NHRC order dated March 24, 1999, Reference Case No. 1/97/NHRC; Supreme Court order dated October 11, 1999, Review Petition No. 447 of 1995. Copies on file with Ensaaf.

¹⁰³ NHRC Order dated August 4, 1997, Reference Case No. 1/97/NHRC, para. 9, quoting *M.C. Mehta v. Union of India*, AIR 1987 SC 1086. In its August 1997 order, the NHRC had quoted from another key case defining the Supreme Court's Article 32 powers in which the Court stated: "[O]ur approach must be guided not by any verbal or formalistic canons of construction but by the

Throughout the entire proceedings, the NHRC refused to investigate a single case of illegal cremation.¹⁰⁴ It relied solely on the accused—the Punjab police—to provide or confirm identification information on victims of illegal cremations. Even in cases where CIIP submitted identification information on partially identified or unidentified cremations, which it had derived by correlating the information available on the death with its database of “disappearances” and extrajudicial executions, the NHRC accepted the identification only if it was confirmed by the Punjab police.¹⁰⁵ Only in one case did the NHRC reject the police version of events based on inconsistencies between an affidavit by the Punjab police and a petition filed by the state of Punjab concerning the same cremation.¹⁰⁶

The NHRC also relied on the police to determine the type of violations. Only where the police were willing to admit custody of the victim prior to his or her death, did the Commission find a violation of the right to life based on the principle of strict liability.¹⁰⁷ The Punjab police never admitted to direct liability or responsibility for violating anyone’s rights, including victims’ right to life or liberty, and continued to

paramount object and purpose for which this article has been enacted as a fundamental right in the Constitution.” NHRC order dated August 4, 1997, para. 9, *quoting Bandhua Mukti Morcha v. Union of India & Others*, AIR 1984 SC 802. Copy on file with Ensaaf.

¹⁰⁴ In its first order on preliminary issues in August 1997, the NHRC discussed setting up commissioners who would “record and process the evidence” and conduct inquiries in order to resolve “the large number of claims that are likely to arise for determination.” NHRC Order dated August 4, 1997, para. 19. Neither the commissioners nor the inquiries ever materialized.

¹⁰⁵ See NHRC order dated October 9, 2006, Reference Case No. 1/97/NHRC: “Learned counsel for CIIP during the course of inquiry filed a further list of 163 persons....The State of Punjab, after verification accepted...[the] identity of 111 persons....On March 3, 2005, CIIP filed yet another list of 12 persons....the State of Punjab accepted the identity of 10 persons out of the list of 12 persons. Thus, it was admitted case of the parties that total number of identified bodies now stood as 703 (582 [identified by the CBI] + 111 + 10),” <http://nhrc.nic.in/Punjab.htm#9th%20October,%202006> (accessed April 20, 2007).

¹⁰⁶ See discussion of case of Paramjit Singh (Sl. No. 67 in CBI list). The dispute was over whether he was in police custody at time of death. NHRC Order dated October 4, 2005 order, Reference Case No. 1/97/NHRC, <http://nhrc.nic.in/Punjab.htm#Date:%204th%20October,%202005> (accessed April 20, 2007). The NHRC also changed the classification of the case of Gurbachan Singh, son of Karnail Singh, to admitted custody after CIIP revealed that police records established that he was in police custody at the time of his death, and the State of Punjab did not dispute this position. NHRC order dated October 9, 2006.

¹⁰⁷ NHRC Order dated November 11, 2004, Reference Case No. 1/97/NHRC. <http://nhrc.nic.in/Punjab.htm#Reference%20made%20by%20the%20Supreme%20Court> (accessed April 20, 2007).

maintain that the victims were mainly terrorists or criminals killed in cross-fire.¹⁰⁸ The NHRC identified 194 such cases out of the list of 2,097 cremations.¹⁰⁹

Where the police denied they had prior custody of the victim but acknowledged that they had illegally cremated the person—in 1,051 cases—the NHRC found that the dignity of the dead had been violated.¹¹⁰ In determining the violation of the dignity of the dead, the NHRC relied primarily on the solicitor general's admission that the Punjab police had not followed the rules for cremating unidentified bodies.¹¹¹ Of the original lists drawn up by the CBI, 814 cremation victims remained unidentified, and an additional 38 cases were excluded as duplicates identified by the state of Punjab.¹¹² These victims were passed to the Amritsar Commission of Inquiry for identification by the NHRC's October 9, 2006 order.¹¹³ The Bhalla Commission subsequently reduced this list to 800 cremations, based on submissions by the Punjab police.

In no case did the NHRC accept testimony from family members or witnesses, despite the drastically differing accounts put forward by the families and the accused. Nor did the NHRC accept challenges to the police version of events, based on victim testimony.¹¹⁴ It relied on the Punjab police for the identifications despite

¹⁰⁸ See, e.g., police affidavits submitted in response to 582 cases identified by CBI, such as Affidavit of Makhan Singh, SP(Detective), Amritsar in CBI No. 285/43 (victim was a robber and killed during attempted robbery); Affidavit of Dilbagh Singh, SP(D), Majitha in CBI No. 281/41 (victim was killed by fellow terrorists). Copies on file with Ensaaf.

¹⁰⁹ NHRC Order dated October 9, 2006, Reference Case No. 1/97/NHRC, <http://nhrc.nic.in/Punjab.htm#9th%20October,%202006> (accessed April 20, 2007).

¹¹⁰ Ibid.

¹¹¹ "In so far as other Rules, as noticed above, are concerned, the learned Solicitor General fairly conceded that appropriate steps under the Punjab Police Rules were not taken before cremation of identified dead bodies and that steps were also not taken to identify the unclaimed dead bodies, where identity of the deceased was not known. It is also admitted that even bare minimal steps...were not undertaken by the Punjab Police before getting the bodies cremated in the three crematoria of Amritsar, Majitha and Tarn Taran." Ibid.

¹¹² The original number of 2,097 was revised to 2,059 after the Punjab Police identified duplicate records in the CBI list. Ibid.

¹¹³ During its proceedings, the Bhalla Commission identified duplicate records and reduced the number of cases in its mandate from 814 to 800. Bhalla Commission order dated May 12, 2007, Reference Case No. 1/97/NHRC and CI/NHRC/2006.

¹¹⁴ At a hearing in February 2007, the NHRC heard CIIP's arguments in response to 54 new identifications made by the Punjab Police after the NHRC had established the Amritsar Commission of Inquiry. The police claimed that the cremation victims had not been in police custody at the time of their deaths. The NHRC placed the entire burden on the CIIP to dispute the police assertions. In the ten days given by the NHRC, Ensaaf investigated five out of the 54 cases, and in four out of the five cases the

several troubling indications of lack of trustworthiness and impartiality, not surprising considering that the Punjab police was investigating its own colleagues. The NHRC itself found a serious lapse by the Punjab police for obviously concealing information at the time of cremation, and only revealing that information years later in litigation—as evidenced by their subsequent ability to identify 663 victims of illegal cremations during the proceedings before the NHRC.¹¹⁵

The NHRC failed to challenge the police version of events despite police admissions of forging the identities of its cremation victims. In February 2006, Punjab state officials admitted that the Punjab police had forged the identities of cremation victims in order to protect over 300 police informants living under assumed identities.¹¹⁶ The informants were alleged to have been killed in police encounters and cremated as unidentified bodies. However, these informants were given new identities and innocent individuals were killed and cremated in their place. This admission means that the true identities of the cremation victims cannot be established until the Punjab police reveals the identities of the victims killed and cremated in lieu of the informants.¹¹⁷

families denied the police version of events and maintained the police had custody prior to the unlawful killing. In the remaining case, the police suppressed the identity of the true victim and his survivors, and colluded with another family to put forward a fraudulent claim in order to collect compensation. The NHRC did not invite survivor testimony or respond to these arguments, or in any way challenge the police identifications. The police later tried to explain away the fraudulent claim as a case of mistaken identity.

¹¹⁵ “The fact that during the course of inquiry before the Commission as many as 663 more bodies have been identified...shows that they were capable of being identified but apparently sincere efforts do not appear to have been made by the Punjab Police to identify the deceased before they were cremated....We find that there has been a serious lapse on the part of the State Police in this behalf.” NHRC Order dated October 9, 2006.

¹¹⁶ “DGP Fears Threat to Sukhi’s Life,” *Tribune* (Chandigarh), February 20, 2006, <http://www.tribuneindia.com/2006/20060220/main4.htm> (accessed April 20, 2007).

¹¹⁷ The CIIP stressed that this information was necessary to ensure that the compensation was granted to the true victim families in submissions to the NHRC and later to the Bhalla Commission but received no response from the NHRC. Copies on file with Ensaaf. In May 2007, after three such cases of forged cremations came to light, an inquiry was ordered by the Punjab DGP. Media reported that in at least one case, police claimed a reward after an innocent individual was killed and cremated in the place of a militant. Ajay Banerjee, “Fake Encounters: Trouble in Store for Erring Cops,” *Tribune* (Chandigarh), July 26, 2007, <http://www.tribuneindia.com/2007/20070726/punjab1.htm#8> (accessed August 1, 2007); Jyoti Kamal, “Punjab digs up a ‘fake encounter,’” *CNN-IBN*, May 8, 2007, <http://www.ibnlive.com/news/Punjab-cops-too-staged-encounters/39960-3.html> (accessed May 9, 2007). In early September 2007, former DGP S.S. Virk was arrested for providing one former militant with a faked identity, after the militant was shown to have been killed by the police. Ajay Banerjee, “Virk case: Real issue ‘cats,’ not just assets,” *Tribune* (Chandigarh), September 10, 2007, <http://www.tribuneindia.com/2007/20070910/main2.htm> (accessed September 10, 2007).

The CIIP demonstrated to the NHRC that the Punjab police had fabricated at least one identification when the next of kin of the decedent admitted to Ensaaf that his father, the alleged secret cremation victim, a former police officer, had died of natural causes at home. A police contact, offering compensation, encouraged him to agree to having his father identified as a victim of a secret cremation.¹¹⁸ When the CIIP presented this information at a February 2007 hearing of the NHRC, after some argument, the Chairperson instructed the state, which had submitted the incorrect identification, to re-investigate only that identification.¹¹⁹ At the subsequent hearing, the state submitted that it had made a mistake in the identification.¹²⁰ The NHRC has not yet pronounced a ruling on this issue.

Throughout the proceedings, the NHRC has failed to investigate the illegality of individual killings, the role of state security forces or their agents in planning or carrying out illegal killings, other rights violations suffered by family members, or the identities of individual perpetrators, among other issues. Instead, in its orders granting compensation, the NHRC repeatedly stated that it was not expressing any opinion regarding culpability or responsibility for even the limited rights violations that it had identified.¹²¹ The NHRC maintained that it did not want to prejudice the investigations being carried out by the CBI.¹²² While the NHRC was not specifically instructed to establish criminal liability, under its Article 32 mandate, it was empowered to conduct detailed investigations capable of establishing the rights violations perpetrated as well as the identity of the responsible officials. In fact, in its August 1997 order, the NHRC had held that it would award compensation “only after the factual foundations are laid establishing liability.”¹²³

¹¹⁸ Ensaaf interview with Joginder Singh, Amritsar, February 14, 2007.

¹¹⁹ Conversations between Trideep Pais, Junior Counsel to CIIP, and Sukhman Dhani, February 15, 17, and 27, 2007.

¹²⁰ Submission to the NHRC by Surinderjit Singh Mand, SP (D), Tarn Taran, Reference Case No. 1/97/NHRC. March 3, 2007. Copy on file with Ensaaf.

¹²¹ NHRC Order dated October 9, 2006. See also, NHRC Order dated November 11, 2004, Reference Case No. 1/97/NHRC, <http://nhrc.nic.in/Punjab.htm#Reference%20made%20by%20the%20Supreme%20Court> (accessed April 20, 2007).

¹²² Ibid.

¹²³ NHRC Order dated August 4, 1997, Reference Case No. 1/97/NHRC. Copy on file with Ensaaf.

The NHRC acted without regard for individual liability with its August 2000 order on 88 claims. In its submissions before the NHRC, the state of Punjab proposed awarding compensation to only 18 of the 88 claimants, with no admission of liability or guilt. The NHRC endorsed the proposal by the state:

For this conclusion it does not matter whether the custody was lawful or unlawful or the exercise of power of control over the person was justified or not, and it is not necessary even to identify the individual officer or officers responsible/concerned.¹²⁴

All of the families submitted affidavits through CIIP rejecting any proposed compensation, stating that arbitrary cash doles did not meet their expectations of justice.¹²⁵

The NHRC has used the principle of strict liability to attribute liability to the state, ignoring the individual actors. Thus, based on the principle of strict liability rather than any findings of wrongdoing by specific officials, the state was ordered to pay compensation to 194 individuals for violating their right to life, and to 1,051 individuals for violating the dignity of the dead.¹²⁶ The use of strict liability resulted in the preclusion of investigations, where the establishment of direct liability was possible. For example, in many cases, the records of the cremation grounds identified the police station and officer who deposited the body for cremation. Thus, the perpetrators of the illegal cremation were identifiable and the Commission should have held them directly liable. However, the NHRC's application of strict liability with the total exclusion of direct liability, combined with the ineffectiveness of CBI prosecutions, has resulted in de facto impunity for the perpetrators.

Developing a comprehensive reparations policy requires extensive investigation to clarify the extent of human rights violations, the potential beneficiaries, and the nature of injuries suffered, among other issues. International law identifies various

¹²⁴ NHRC Order dated August 18, 2000, Reference Case No. 1/97/NHRC. Copy on file with Ensaaf.

¹²⁵ Application by Petitioners in Writ Petition No. 447 of 1995 Seeking Clarification and Directions with Reference to Orders dated August 4, 1998 [sic], January 13, 1999 and March 24, 1999 (Received February 1, 2001). Copy on file with Ensaaf.

¹²⁶ NHRC Order dated October 9, 2006.

methods of reparations, as discussed above. The NHRC has not come close to meeting this standard. Instead it has offered an arbitrarily determined amount of money only to a small subset of victims' families. Given the NHRC's failures to establish what happened to their loved ones or to identify the security officers responsible for abuses, many families who have been offered compensation, moreover, have perceived the offer as an attempt to buy their silence.¹²⁷

In its first major compensation order in November 2004, the NHRC quoted Supreme Court precedent which stated that the amount of compensation depended on the facts of each case.¹²⁸ The NHRC asserted, "Indeed, the quantum of compensation depends upon the circumstance of each case and there is no rule of thumb which can be applied to all cases nor even a universally applicable formula." This reiterated a holding from the NHRC's August 1997 order where it stated, "Indeed the question of quantification of compensation will arise [sic] only after the factual foundations are laid establishing liability and, only thereafter, the questions of quantification follow."¹²⁹ Notwithstanding this precedent, the NHRC proceeded to award the same lump sum in every case in which the Punjab police admitted having had custody of the victim prior to the cremation.¹³⁰ It subsequently defined "factual foundations" to mean the violation of the dignity of the dead as a result of the unlawful cremation, not the "manner and method of killing."¹³¹ Thus, in over 10 years of proceedings, the Commission was not able to establish any new factual foundations; the fact of illegal cremation had been established by the CBI and Supreme Court in 1996.

¹²⁷ Application by Petitioners in Writ Petition No. 447 of 1995 Seeking Clarification and Directions with Reference to Orders dated August 4, 1998 [sic], January 13, 1999 and March 24, 1999 (Received February 1, 2001). Includes 17 affidavits by survivor families. Copy on file with Ensaaf.

¹²⁸ NHRC Order dated November 11, 2004, quoting *DK Basu v. State of West Bengal*, (1997) 1 SCC 416.

¹²⁹ NHRC Order dated August 4, 1997, Reference Case No. 1/97/NHRC. Copy on file with Ensaaf.

¹³⁰ NHRC Order dated November 11, 2004, quoting *DK Basu v. State of West Bengal*, (1997) 1 SCC 416.

¹³¹ NHRC order dated November 11, 2005, Reference Case No. 1/97/NHRC, <http://nhrc.nic.in/Punjab.htm#Punjab%20Mass%20Cremation%20Order%20dated%2011%20November%202005> (accessed April 29, 2007).

CIIP solicited the intervention of international human rights groups to demonstrate the need to investigate the violations of the right to life and the physical and psychological trauma suffered by victims' family members. Without such an understanding, the NHRC would not be able to develop or provide meaningful reparations. During a ten-day evaluation of 127 families in May 2005, organized by Ensaaf, experts of the Physicians for Human Rights (PHR) and the Bellevue/NYU Program for Survivors of Torture (Bellevue) assessed the torture and trauma suffered by families of some of the "disappeared" and extrajudicially executed persons, whose cases were part of the Punjab mass cremations case before the NHRC. The expert report submitted at the NHRC hearing on October 24, 2005, demonstrated that the deprivation of life occurred within a pattern of violations that included intentional abuse of multiple family members of the "disappeared" or extrajudicially executed person. The PHR/Bellevue evaluation found alarming rates of current and past psychological and physical suffering among the family members.¹³² The CIIP called on the Commission to summon the authors of the report to testify.¹³³

The Commission rejected the report and attacked the authors' professional credibility.¹³⁴ The Commission did not attempt to resolve any of the objections it discussed in its order, in writing or at the multiple hearings that occurred between the report's submission in October 2005 and the order issued regarding the report in October 2006. PHR and Bellevue responded to the NHRC's order with an open letter in December 2006.¹³⁵

¹³² "Rates of depression, posttraumatic stress disorder, and global psychological distress were extremely high, with nearly 80% of the individuals interviewed reporting a past or present major depressive disorder and more than half reporting symptoms indicative of posttraumatic stress disorder." Physicians for Human Rights (PHR) and the Bellevue/NYU Program for Survivors of Torture (Bellevue), "Evaluation of Litigants Pertaining to Writ Petition (Crl.) No. 447/95 Committee for Information and Initiative on Punjab v. State of Punjab," October 24, 2005, <http://www.ensaaf.org/pdf/reports/PHR-Bellevue.pdf> (accessed April 29, 2007), pp. 19-20.

¹³³ Application by the Petitioner, October 24, 2005, Writ Petition (Criminal) No. 447 of 1995, *Committee for Information and Initiative on Punjab v. State of Punjab and Others*.

¹³⁴ NHRC Order dated October 10, 2006, Misc. Petition No. A-1 dated 24.10.2005 in Reference Case No. 1/97/NHRC. Copy on file with Ensaaf.

¹³⁵ Open letter from Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture to Honorable Dr. Justice Shivaraj V. Patil, Acting Chairperson, National Human Rights Commission, December 8, 2006, <http://www.ensaaf.org/pdf/legal/PHRLetter.pdf> (accessed April 20, 2007).

In its last major order on October 9, 2006, the NHRC dismissed CIIP's arguments regarding the development of a comprehensive reparations program. The NHRC stated that it was sure the state of Punjab was fulfilling its obligations, and the NHRC did not feel compelled to make an order:

[T]he Learned Solicitor General stated that the State of Punjab had been taking all such steps as are necessary to heal the wounds of the effected families....It is an obligation of every civilized State to ensure that its acts, which have been found to be violative of humanitarian laws and/or which impinge upon human rights of the citizens, do not reoccur. We have no doubt that the State of Punjab as well as the Union of India are alive to their obligations in this behalf and would take appropriate steps which would also restore institutional integrity. We have also no doubt that the State of Punjab would offer medical/psychological assistance to a member/members of any such family which has suffered as a result of the tragedy, who approaches it, at State expense so that the healing process started by it becomes meaningful. In view of the statement of the learned Solicitor General no further directions in that behalf are as such necessary to be issued by the Commission.¹³⁶

The Commission thus left the development of reparations to the goodwill of Punjab, which has not only consistently denied the rights violations and refused to accept responsibility throughout the proceedings, but has also failed to take any reparative steps to heal the wounds of the families.

We provide some examples below where the NHRC's interpretation of its mandate has left out individuals who suffered violations of the rights to life and liberty. By limiting its mandate to these 2,097 cremations, the NHRC has excluded:

- Victims of "disappearances" by Indian security forces, where the families have no knowledge of the victim's ultimate fate;

¹³⁶ NHRC Order dated October 9, 2006.

- Victims of unlawful killings whose bodies were dumped in bodies of water, dismembered and dispersed, or disposed of through other methods;
- Victims of unlawful killings whom the Punjab police illegally cremated in other districts of Punjab;
- Victims of unlawful killings whom the Punjab police illegally cremated prior to 1984 and after 1994 in the three crematoria at issue in Amritsar district;
- Victims of unlawful killings whom the Punjab police illegally cremated, but who were not included in the CBI's list of 2097 cremations, including those cremated at other cremation grounds in Amritsar district; and
- Victims of other human rights violations, such as custodial torture and illegal detention.

The case of Jugraj Singh, son of Mohinder Singh

This case illustrates the exclusion of cases of individuals cremated in Amritsar after 1994, and therefore outside the NHRC's limited mandate. Jugraj Singh was abducted from Ropar district, but killed and cremated in Amritsar district in January 1995. (This case is discussed in detail later in this chapter to illustrate the failure of the courts in addressing extrajudicial executions.)

On January 14, 1995, 27-year-old Jugraj Singh, a taxi driver, was driving his Maruti van towards the market of Phase III B-2 Mohali, Ropar, to get his vehicle repaired. As he proceeded, individuals in civilian clothes signaled him to stop. An eyewitness later told Mohinder Singh, Jugraj Singh's father, that the individuals who stopped the van had been waiting for a while and had come to the market in a Maruti car with registration No. PCO-42. When Jugraj stopped his vehicle, these individuals forcibly entered his van and had him drive away.

The next day, Mohinder Singh went to the police station to register a complaint, stating that people had witnessed his son's abduction by the police. The day after, he visited the market and spoke to the owner of the shop next to the mechanic's shop. This man confirmed that he had seen Jugraj in a van with police, and that the police had also abducted Sukhdev Singh from his shop.¹³⁷

The police reported that Jugraj Singh was killed on January 15, 1995, in Amritsar in what they claimed was an armed encounter. Considering that eyewitnesses saw Jugraj Singh being abducted by the police, his father Mohinder Singh believes he was killed in a faked encounter.¹³⁸ According to a CBI inquiry, officials of the Municipal Corporation in Amritsar cremated his body.¹³⁹ Because his son was killed one month after the time boundary fixed by the Supreme Court and the NHRC, Jugraj Singh has been excluded from the Punjab mass cremations case.

¹³⁷ Ensaaf interviews with Mohinder Singh, Ropar, March 13 to April 1, 2007.

¹³⁸ Ibid.

¹³⁹ Report of Investigation in Crim. Misc. Pet. No. 92 of 1995 & Cr. W.P. No. 87 of 1995, Punjab and Haryana High Court. CBI Case No. RC-4(S)/96-SIU.I/SIC.I/New Delhi. S. Prasad, DSP CBI SIC.I. New Delhi, 16 August 1996, paras. 16 (cremation), 20-21, 28 (establishing identity of unidentified body as Jugraj Singh son of Mohinder Singh). Copy on file with Ensaaf.

The case of Charrat Singh and Rashpal Singh, sons of Gurbachan Singh

On November 17, 1988, Gurbachan Singh's youngest son Rashpal Singh, about 15 or 16 years old, was traveling on a bus to visit his maternal family, when Punjab police stopped the bus and removed Rashpal and another youth. That same day, the newspapers reported that the police killed five persons in an alleged encounter. Gurbachan Singh learned that those five persons were cremated at



Gurbachan Singh holds pictures of his sons, Rashpal Singh and Charrat Singh, who were killed by Indian security forces; Indian institutions have refused to acknowledge these killings, despite eyewitnesses to the abductions and police custody.
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Durgiana Mandir cremation ground in Amritsar—one of the cremation grounds investigated by the CBI. After speaking to employees there,

Gurbachan Singh believes that his son was one of the individuals cremated because his son matched the physical description of a victim. His cremation, however, does not appear on the CBI list, and has thus been excluded from the Punjab mass cremations case by the NHRC's limited mandate.

On June 18, 1989, between 4 and 5 p.m., approximately 100 security personnel from the Punjab police, Criminal Investigation Agency (CIA) Staff, and Central Reserve Police Force (CRPF) raided Gurbachan Singh's village Johal Raju Singh in Tarn Taran, Punjab. Gurbachan Singh told Ensaaf:

The security forces proceeded to my residence and then my fields, where my son Charrat Singh and I were working. The Punjab police grabbed Charrat Singh and me, brought us to the small tube-well by the village, and began to savagely beat my son with their rifle butts. ...They drove away with me and my son, but dropped me off on the way, and that was the last time I saw him. The security forces took my son to CIA Staff, Tarn Taran. Many folks from the village accompanied me to CIA Staff, where we asked to see my son and requested his release, but the police refused.¹⁴⁰

¹⁴⁰ Ensaaf interview with Gurbachan Singh, Tarn Taran, February 27 to 28, 2007.

On June 24, 1989, the Punjabi daily Ajit reported that unidentified persons had been killed in an encounter. A few days later, Gurbachan Singh and his family went to Police Station Tarn Taran (Sadar) to verify the news of the killing:

At the police station, we spoke with the clerk, who showed us a pile of clothes, and asked if we recognized any of them. Among the articles of clothing, we recognized the *parna* (small turban) worn by Charrat Singh on the day the security forces abducted him. We were allowed to view Charrat Singh's *parna*, but the clerk did not allow us to take it with us.¹⁴¹

Gurbachan Singh did not receive the bodies of either of his “disappeared” sons, nor was he informed of their cremations, but he believes them both to have been killed by the Punjab police.

In response to the November 2006 notice issued by the Amritsar Commission of Inquiry, Gurbachan Singh submitted claims regarding both his sons. His claim for Rashpal Singh was never considered because Rashpal Singh's cremation did not appear on the CBI list.

Justice Bhalla eventually allowed Gurbachan Singh to submit information on Charrat Singh's death because Charrat Singh's cremation matched an unidentified cremation on the CBI list of 814 remaining unidentified cremations. The Punjab police, however, rejected the identification of Charrat Singh.¹⁴² Justice Bhalla confirmed the police's rejection of the identification, stating that Gurbachan Singh's affidavit was not sufficient because Gurbachan Singh himself did not see Charrat Singh's dead body. Justice Bhalla did not mention Gurbachan Singh's identification of Charrat Singh's belongings in police custody.¹⁴³

The unlawful killings of Gurbachan Singh's two sons highlight the disparate remedies available because of arbitrary distinctions resulting from the NHRC's limited mandate and failure to investigate cases.

¹⁴¹ Ibid.

¹⁴² “Comments regarding the list of four cases submitted by CIIP on 03.03.07,” by Sudhir Walia, Adv. for Punjab Police. Submitted March 24, 2007. Copy on file with Ensaaf.

¹⁴³ Bhalla Commission order dated April 10, 2007. Reference Case No. 1/97/NHRC and CI/NHRC/2006. Copy on file with Ensaaf. Bhalla Commission order dated April 28, 2007. Reference Case No. 1/97/NHRC and CI/NHRC/2006 (insufficiency of Gurbachan Singh's affidavit). Copy on file with Ensaaf. Bhalla Commission order dated June 8, 2007. Reference Case No. 1/97/NHRC and CI/NHRC/2006 (final rejection of identification). Copy on file with Ensaaf.

The case of Mehal Singh and Gurmail Singh, sons of Dara Singh

Dara Singh lost two of his four sons to extrajudicial killings: his youngest son Mehal Singh, aged 16, and his oldest son Gurmail Singh, aged 37.¹⁴⁴ The NHRC did not acknowledge Dara Singh's submission regarding Gurmail Singh because its limited mandate excluded cremations outside of Amritsar. In August 2000, the State of Punjab found 18 cases eligible for



compensation with no admission of liability or wrongdoing, including that of Mehal Singh. Dara Singh rejected this compensation. Despite the fact that the individuals in these

Dara Singh told Ensaaf how he rejected the human rights commission's attempt in 2000 to buy his silence by offering him a small amount of compensation for the extrajudicial execution and illegal cremation of one of his sons, with no investigation or admission of liability. Indian security forces killed two of his sons. © 2007 Ensaaf

cases had been fully identified, the case of his son later reappeared on the unidentified list.¹⁴⁵ The Punjab police now denies that Mehal Singh's body was ever identified.¹⁴⁶ The Bhalla Commission has also rejected the identification of Mehal Singh's remains, because his father did not see his dead body and the doctor who conducted the post mortem and confirmed his son's identity did not depose before the Commission.¹⁴⁷

Dara Singh told Ensaaf:

My youngest son Mehal Singh was an apprentice at a tractor repair workshop in Tarn Taran. On the night of June 17 to 18, 1989, [names of police officers withheld] from

¹⁴⁴ Ensaaf interview with Dara Singh, Tarn Taran, April 8, 2007. See also, Affidavit of Dara Singh, in Application by Petitioners in Writ Petition No. 447 of 1995 Seeking Clarification and Directions with Reference to Orders dated August 4, 1998, January 13, 1999 and March 24, 1999 (received February 1, 2001). Copy on file with Ensaaf.

¹⁴⁵ CIIP Submission to Bhalla Commission, March 2, 2007, para. 2 (submitted with April 10, 2007 application). Copy on file with Ensaaf. See also, Bhalla Commission order dated February 3, 2007. Reference Case No. 1/97/NHRC and CI/NHRC/2006 (referencing CIIP submission on three previously identified cases now marked as unidentified).

¹⁴⁶ "Comments regarding the list of four cases submitted by CIIP on 03.03.07," by Sudhir Walia, Adv. for Punjab Police. Submitted March 24, 2007. Copy on file with Ensaaf.

¹⁴⁷ Bhalla Commission order dated April 28, 2007. Reference Case No. 1/97/NHRC and CI/NHRC/2006. Copy on file with Ensaaf.

Tarn Taran (Sadar) police station led a heavy police force ...including the Punjab police and the CRPF, in raiding my house. It was after midnight when they came.

The security forces began beating me and my sons. They tied our hands behind our backs and lined us up facing a wall in the courtyard and threatened to execute us right then. The security forces thoroughly searched the house, and stole several valuable items, but did not recover anything incriminating....¹⁴⁸

They then detained us at the police station for two hours and continued beating us, especially Mehal Singh. [Names of two police officers withheld] started torturing Mehal Singh. Around 5 a.m., they transferred all of us to the CIA Staff Interrogation Centre in Tarn Taran. There again, they segregated Mehal Singh and tortured him under the supervision of [name of third police officer withheld]. The rest of us were seated on the floor outside of the cell where they were torturing him, and we could hear his shrieks from the torture. Later that day, they transferred all of us, except Mehal Singh, to the Tarn Taran Sadar police station. They detained us for two days and interrogated us about weapons and threatened to kill us.¹⁴⁹

The police officers released all of them, except Mehal Singh, on June 19, 1989. Dara Singh said he then immediately collected many respectable people from his area and went to CIA Staff Tarn Taran to inquire about Mehal Singh. Gurbachan Singh of village Johal Raju Singh, whose testimony is cited above, joined the delegation since his son Charrat Singh had also been abducted by the Tarn Taran police. But the station house officer denied custody of Mehal Singh and Charrat Singh. Dara Singh told Ensaaf:

Every day thereafter, I waited by the butcher shop [referring to CIA Staff Tarn Taran] to see if they would release my son. On June 24, by chance, I was by the entrance to the civil hospital where they conduct post mortems. There, I saw a tractor-trolley parked, and I guessed that there were bodies in the trolley. I went towards the trolley and attempted to climb in to see if my son was inside, but a policeman, who was sitting in the passenger's seat, warned me not to get in. The trolley took off a few moments later. I followed the trolley, [walking] to the cremation ground by myself, which took about an hour.

¹⁴⁸ Ensaaf interview with Dara Singh, Tarn Taran, April 8, 2007.

¹⁴⁹ Ibid.

At the cremation ground, I met one of the workers. He said that the police had just dropped off two bodies for cremation, and pointed to where they were being cremated. There were several other bodies being cremated in a line. I went to the cremations he indicated.

I wasn't certain that the bodies were Mehal Singh and Charrat Singh, so I continued to try to find out what happened to them.¹⁵⁰

About 8 to 10 days later, Dara Singh and a colleague who knew the doctor who performed post mortems at the civil hospital, went and spoke to the doctor. The doctor told him that he had conducted post mortems on two youth who fit the description of Mehal Singh and Gurbachan Singh's son Charrat Singh. The doctor further described the clothes the boys were wearing. Dara Singh told Ensaaf:

We hired an attorney and obtained an order from a judge in Tarn Taran directing the police to show us the clothes in their possession. We took the order to Tarn Taran (Sadar) Police Station and spoke with the SHO. He said that we should perform our religious rites for the dead for Mehal Singh and Charrat Singh. We took this to mean that they were dead.¹⁵¹

The police continued to harass Dara Singh and his family, detaining them two to three more times. They wanted the family to produce Gurmail Singh, Dara Singh's eldest son:

In the second week of June 1990, Gurmail Singh joined a Kar Sewa group renovating a gurdwara at village Gharam in Patiala district on the Punjab-Haryana border. Ten or 12 days later, a group of police officers from Ambala district in Haryana came to our village and made inquiries about the identity of Gurmail Singh, who, according to a newspaper report, had been killed in an encounter along with four other militants. The newspaper report did not mention my son's name, but called him an unidentified militant. However, I recognized my son's photograph that was published in the article. ...Fearing further reprisals against my remaining sons, I

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

didn't pursue the matter. The families of the other encounter victims told us that the youth had been cremated in Ambala, the place of the encounter.¹⁵²

In 1999, Dara Singh responded to the NHRC's notice for claims regarding mass cremations. He submitted claims on behalf of Mehal Singh and Gurmail Singh. The NHRC decided that the family was eligible to receive compensation for the wrongful cremation of Mehal Singh, but Dara Singh rejected the compensation:¹⁵³

Money is not justice. The police murdered both of my sons, and they won't even admit that they did something wrong. They call my sons terrorists! The police are the terrorists..... The government should also give us copies of their records relating to the murder of my sons, so we can figure out what really happened.¹⁵⁴

In its October 9, 2006 order, which effectively closed all of the major issues dealing with the matter of police abductions leading to "disappearances" and secret cremations in Punjab, the NHRC appointed a commissioner of inquiry in Amritsar, retired High Court Judge K.S. Bhalla, to identify as many as possible of the remaining 814 cremation victims from the CBI list within eight months. The number of unidentified cremations was subsequently revised to 800.¹⁵⁵

After its appointment, the Bhalla Commission and NHRC held ex parte meetings, excluding the petitioner CIIP.¹⁵⁶ As a result, the NHRC issued an order on October 30, 2006, that limited participation in the Bhalla Commission proceedings to those families who were among the 1,857 families who had submitted claims in response to NHRC public notices issued in 1999 and 2004. The NHRC also restricted all 1,857

¹⁵² Ibid.

¹⁵³ Affidavit of Dara Singh, in Application by Petitioners in Writ Petition No. 447 of 1995.

¹⁵⁴ Ensaaf interview with Dara Singh, Tarn Taran, April 8, 2007.

¹⁵⁵ The Bhalla Commission subsequently revised the number of unidentified cremations from 814 to 800 because of alleged clerical errors by the CBI. Bhalla Commission order dated May 12, 2007. Reference Case No. 1/97/NHRC and CI/NHRC/2006. Copy on file with Ensaaf.

¹⁵⁶ This includes one meeting between the NHRC, Bhalla Commission, and Punjab Police in October 2006, and a private meeting at the January 2nd Bhalla Commission hearing, when Justice Bhalla left the courtroom to hold private discussions with representatives of the Punjab Police, before returning to start the hearing. Neither the Commission nor the Punjab Police have informed the CIIP of what transpired in Justice Bhalla's chambers. Ensaaf attended the January 2, 2007 hearing.

claimants from participating in the proceedings by requiring the claimants to resubmit their claims in response to a public notice issued in November 2006.¹⁵⁷ The end result was that only 70 of 1,857 claimants were eligible to participate in the Bhalla Commission proceedings.¹⁵⁸ In its October 30, 2006 order, the NHRC did not provide any rationale or legal justification for narrowing participation in the Bhalla Commission through such a procedure.

The NHRC limited Justice Bhalla's mandate to identifying the remaining illegal cremations, but placed no further restrictions. However, Justice Bhalla demonstrated little interest in the underlying facts. In his February 3, 2007 order, he explicitly stated that human rights violations by the police did not fall within his scope of inquiry.¹⁵⁹ Further, at the April 10, 2007 hearing, Justice Bhalla stated:

Naturally, if the police had known the identity of the individuals, they would have turned over their bodies to the families. What interest would they have in keeping the bodies?¹⁶⁰

This comment reflected Justice Bhalla's dismissal of the contention that the police purposely covered up the identities of the individuals and destroyed their bodies in order to eliminate significant forensic evidence of torture and custodial death.

Justice Bhalla continued the NHRC practice of relying on the Punjab police for identifications or confirmations of victims of illegal cremations, instead of developing an independent methodology or conducting his own investigations. While CIIP and other petitioners submitted identification information to Justice Bhalla, he waited for confirmation from the Punjab police. If the Punjab police

¹⁵⁷ NHRC Order dated October 30, 2006, Reference Case No. 1/97/NHRC, para. 16. Copy on file with Ensaaf.

¹⁵⁸ Bhalla Commission order dated January 2, 2007. Reference Case No. 1/97/NHRC and CI/NHRC/2006. Copy on file with Ensaaf. Out of the 1,857 claims, those that were not matched to a cremation were not processed further by any agency.

¹⁵⁹ Bhalla Commission order dated February 3, 2007. Reference Case No. 1/97/NHRC and CI/NHRC/2006. Copy on file with Ensaaf. See also, Bhalla Commission order dated April 28, 2007. Reference Case No. 1/97/NHRC and CI/NHRC/2006 (stating that it is not the scope of the Commission to determine the fate of the survivor's son and what happened to the victim's dead body). Copy on file with Ensaaf.

¹⁶⁰ Ensaaf attended the hearing.

rejected the identification, Justice Bhalla placed insurmountable evidentiary burdens on the petitioners, requiring them to produce evidence of the dead body or cremation.



These women, whose family members were “disappeared” or extrajudicially executed by the Punjab police, regularly attended hearings of the Bhalla Commission in Amritsar but did not receive an opportunity to testify because they were excluded by the Commission’s arbitrary procedures.

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At the initial hearings, through written and oral argument, the CIIP urged the Commission to adopt a rigorous methodology to resolve the unidentified cremations, and require the State to produce police records, post mortem reports, habeas corpus petitions, and news reports on abductions, “disappearances” and encounters. The CIIP also urged the Commission to solicit claims from throughout Punjab and allow all prior and new claimants to participate in the proceedings. The Bhalla Commission rejected these arguments at the February 3, 2007 hearing.¹⁶¹

¹⁶¹ Ensaaf attended all hearings for the Bhalla Commission of Inquiry from January 2, 2007 to April 10, 2007.

Justice Bhalla further restricted the access of relatives to the commission, stating that victim families could not submit claims directly to the Commission, although they could provide information for the limited purpose of identification through CIIP or other petitioners. He did not explain how families excluded by the October 2006 NHRC order and November 2006 notice would know that they had this limited option. It was clear, however, that Justice Bhalla would not allow these families to testify.

The NHRC and Bhalla Commissions never acknowledged the possibility that the remaining 800 unidentified bodies could not be identified from the pool of 1,857 prior claims, and that a more inclusive process of participation was required if the Commissions were serious about establishing the identities of all 800 victims. At least 10 percent of the victims previously identified by the NHRC as having been secretly cremated in Amritsar lived outside of Amritsar district.¹⁶² The CIIP repeatedly suggested issuing a public notice throughout Punjab, inviting all victim families who believed their relatives may have been cremated in Amritsar to submit claims; these suggestions were rejected by the Bhalla Commission.¹⁶³

The Bhalla Commission held its last hearing on June 29, 2007, and presumably submitted its final report to the NHRC. This report, according to the NHRC's October 30, 2006 order, was due on June 30, 2007. The petitioners have not yet received a copy of the report. The NHRC initially scheduled a hearing for August 2007, but has postponed the hearing three times.¹⁶⁴

B. CBI failure to investigate extrajudicial killings

The Supreme Court had entrusted the CBI with investigations into the culpability of police officials in the secret cremations case.¹⁶⁵ The CBI was ordered to submit

¹⁶² NHRC Order dated October 9, 2006, Reference Case No. 1/97/NHRC, Annexure A. Copy on file with Ensaaf. Ensaaf analysis of cremations listed in Annexure A.

¹⁶³ Submissions of the Petitioner Committee for CIIP in WP No. 447 of 1995 on the issues of Evidence and Inquiry to Fix the Identity of the Remaining 814 Cremations, Bhalla Commission, January 2, 2007. Bhalla Commission order dated February 3, 2007. Reference Case No. 1/97/NHRC and CI/NHRC/2006. Copy on file with Ensaaf.

¹⁶⁴ At time of writing, the next NHRC hearing was scheduled for October 18, 2007.

¹⁶⁵ Order of the Supreme Court dated December 11, 1996.

quarterly confidential progress reports.¹⁶⁶ Over 10 years later, the petitioners have no information regarding whether there have been any prosecutions.

In a July 1996 order, the Supreme Court ordered the CBI to register three cases—those which had specifically been mentioned in Jaswant Singh Khalsa's press release regarding his investigations: Pargat Singh "Bullet," Piyara Singh, and Baghel Singh.¹⁶⁷ The Punjab police responded that Baghel Singh was run over by a truck while being brought to Amritsar,¹⁶⁸ Piyara Singh was killed by an ambush while being taken for recovery of weapons,¹⁶⁹ and Pargat Singh was killed in an encounter.¹⁷⁰

The case of two Pargat Singhs

The case of Pargat Singh "Bullet" illustrates the Punjab police's practice of falsely identifying cremation victims, and the CBI's collusion in that practice.

At the time of the July 1996 Supreme Court order mandating a CBI investigation into Pargat Singh's death, the only information available was the date and place of cremation, the police station allegedly involved in the abduction and illegal cremation, and that Pargat Singh had allegedly been undergoing treatment at the Guru Nanak Dev hospital in Amritsar.¹⁷¹

But Pargat Singh has never properly been identified. One man, retired army officer Baldev Singh, claims he saw his son, named Pargat Singh, being cremated. However, the CBI and police have refused to respond to his pleas, and instead insist that the Pargat Singh that was cremated by Punjab police was the son of another man we can only identify as G. Singh at his son's request. Both Pargat Singhs were nicknamed "Bullet."

¹⁶⁶ Ibid.

¹⁶⁷ Order dated July 22, 1996. Writ Petitions (Crl.) Nos. 497 and 447 of 1995. Copy on file with Ensaaf.

¹⁶⁸ Affidavit on behalf of Respondents No. 4 to 6, Writ Petitions (Crl.) Nos. 497 and 447 of 1995 (Received August 14, 1998), Annexure A/4: Affidavit by Sukhdev Singh Chhina, SP(City) Amritsar, Writ Petitions (Crl.) Nos. 497 and 447 of 1995, Submission on Merit, para. 5vi (Submission on Merit). Copy on file with Ensaaf.

¹⁶⁹ Submission on Merit, para. 5vii.

¹⁷⁰ Submission on Merit, para. 5viii.

¹⁷¹ Writ Petition (Crl.) No. 447 of 1995, *Committee for Information and Initiative on Punjab v. State of Punjab and Others*, April 3, 1995, para. 5viii.

In the first year of the legal proceedings, Baldev Singh submitted an affidavit through CIIP regarding the extrajudicial execution and illegal cremation of his son, known as “Bullet,” after his detention by the Punjab police on September 19, 1992, from a movie theatre in Amritsar.¹⁷²

The police started questioning Pargat Singh and his family in October 1988 and tortured Pargat Singh during six days of illegal detention. Later, when the police could not find Pargat Singh because he had gone underground, they illegally detained and tortured Pargat Singh’s father and older brother. Baldev Singh told Ensaaf:

[T]hey arrested me over 200 times during a period of two-and-a-half years and tortured me on many of those occasions. They would always ask me to turn over my son. But how could I? He was underground and never came home. During those days, the entire family stayed away from home. If I wasn’t home when the police came, they would take my wife and son and wouldn’t release them until I turned myself in.¹⁷³

On September 20, 1992, Baldev Singh learned that Pargat Singh “Bullet” had been taken into police detention. He learned of the detention from his sister who met Pargat Singh in custody when she visited her son who had also been detained. (Her son was later released).

Baldev Singh immediately went to the police station to look for his son but was refused. He then began desperately to try to locate his son. One deputy superintendent of police (DSP) confirmed to a close police contact of Baldev Singh’s that Pargat Singh was in police detention, but refused to release him. Baldev Singh also learned that the police took Pargat Singh to B.R. Model School, an unofficial interrogation center, and tortured him.

¹⁷² Affidavit of Baldev Singh, submitted September 27, 1995 to Supreme Court in Civil Writ Pet. No. 447 of 1995, *Committee for Information and Initiative on Punjab v. State of Punjab and Others*, para. 4. Copy on file with Ensaaf.

¹⁷³ Ensaaf interview with Baldev Singh, Amritsar, March 29, 2007.

Five days later, Baldev Singh asked another person who knew the district's senior superintendent of police (SSP) to inquire after Pargat Singh. Baldev Singh said,

The SSP told him that Pargat Singh had been taken to the hospital for treatment. After that, I have no idea where they detained Pargat Singh or what they did to him, until I learned about his encounter.¹⁷⁴

On the morning of November 5, Baldev Singh's friend met with the SSP to ask about Pargat Singh. This time Baldev Singh heard that his son had been killed:

The SSP told him that yesterday they had killed Pargat Singh in an encounter and would cremate his body that day at Durgiana Mandir. The SSP further said that they would not turn over his body.¹⁷⁵

The same day, Baldev Singh also read in the paper that Pargat Singh "Bullet" had been killed in an encounter. A former member of parliament (MP) from Amritsar, who had been helping the family locate Pargat Singh, called the SSP of Tarn Taran and asked for the body for cremation. The SSP told the MP they could attend the cremation at Durgiana Mandir cremation ground at 4 p.m. The MP advised Baldev Singh to go to the cremation ground immediately, since he could not trust the police. Baldev Singh recounted in his affidavit how he witnessed the cremation of his son:

I went to the cremation ground at Durgiana temple to ask whether the police had already cremated him [Pargat Singh]. He had not been. Then I went to the General Hospital [Guru Nanak Dev hospital] where his post mortem had been conducted. There I talked to an employee who had helped with the post mortem. He gave a detailed description of the body confirming that the person murdered in the faked encounter was indeed my son Pragat [sic]. He also told me that the

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

police had taken the body away for the cremation. I rushed back to the cremation ground. The pyre had already been lit.¹⁷⁶

Baldev Singh told Ensaaf:

Pargat Singh's body had just started to burn from the head. His body was on a stack of firewood, and then more wood was stacked on top of his body. We rushed to the pyre and removed the wood on top. His body was wrapped in a blanket. We ripped it open with our fingers. The blanket was rotten so it came apart easily. I immediately recognized my son's body. We saw bullet wounds on the left side of his body with exit wounds on the right. Once I was satisfied, we placed the wood back on top and allowed the pyre to burn.¹⁷⁷

The police cremated Pargat Singh "Bullet," son of Baldev Singh, on November 5, 1992; the next day the family collected his ashes.

The CBI visited Baldev Singh in the winter of 1996. He told them he wanted justice, but never heard from them again. Baldev Singh later learned that the CBI had refused to list his son as one of those identified as having been cremated by the Punjab police. He was instead identified as another Pargat Singh, a resident of M— village and son of G. Singh. Baldev Singh said he tried to convince the police that he had witnessed his son's cremation, but to no avail. He was instead asked to produce his son.

In November 2006, an inspector from B-Division summoned me to the police station. He asked me to identify my son. I told him that my son was Pargat Singh and that he had been killed in a fake encounter. He started berating me saying that he didn't believe me. He said that Pargat Singh belonged to a family from village M—. He told me that it was impossible for there to be two Pargat Singh's from two different families, both killed in the same encounter, yet only one body. He then

¹⁷⁶ Affidavit of Baldev Singh, para. 5.

¹⁷⁷ Ensaaf interview with Baldev Singh, Amritsar, Marcy 29, 2007.

demanded that I turn over my son. I told him that he could say whatever he liked, but I saw my son's body with my own eyes. He continued shouting at me, saying there couldn't be two Pargat Singhs. I told him that was for him to explain, not me, but I saw him with my own eyes.

I returned about one week later to determine if they would acknowledge my son. The inspector said that he wouldn't recognize my claim. He would recognize the family from M— village. According to his documentation, they were Pargat Singh's family so he would decide in their favor. There was nothing else I could say, so I left.

The government should tell me what really happened. They should acknowledge my son's death. I saw him with my own eyes. How can they tell me that it wasn't my son?...They made my family suffer. Nobody was willing to marry my daughter. I'm not hungry for money, I'm hungry for justice.¹⁷⁸

The CBI continues to identify the Pargat Singh who was cremated on November 5, 1992, as the son of G. Singh, not Baldev Singh.

The Pargat Singh that the CBI list acknowledges was the son of G.Singh and nicknamed "Mini Bullet." Pargat Singh's brothers told Ensaaf that he was a militant with the Khalistan Commando Force (KCF). The police regularly harassed his family. K. Singh, Pargat Singh's brother, recounted to Ensaaf:

All in all, over the years, I was abducted and tortured 15 to 17 times. Chabal, Bhikiwind, Khalra, Harike were the main police stations involved. My father was abducted five to six times. In 1992, the police detained me continuously for seven months at various police stations, and beat me. When they transferred me between police stations, they

¹⁷⁸ Ibid.

would blindfold me, so I didn't know where I was. I was released five to six days after they killed my brother Pargat Singh.¹⁷⁹

According to the Punjab police, Pargat Singh of M—village was cremated on November 5, 1992, the same day that Baldev Singh witnessed the cremation of his son Pargat Singh. Only one Pargat Singh's cremation is recorded on that day in the cremation ground records.¹⁸⁰ The family of G. Singh read about the cremation at Durgiana Mandir cremation ground in the *Ajit* newspaper and went to collect the ashes; the cremation ground workers did not give the ashes to them.

As discussed above, in July 1996, the Supreme Court ordered the CBI to investigate the killing of Pargat Singh “Bullet.” One of his brothers, K. Singh, described the extent of investigation:

Many years later, the CBI visited our house to ask us about Pargat Singh's death. They came a total of four times. The first two times the CBI came from Patiala. The first two times we were afraid to talk to the CBI and told them that we didn't know anything. Then we spoke with Mrs. Khalra [Jaswant Singh Khalra's widow] and she said that it was okay to speak with them—that they were investigating our case.

The CBI from Amritsar then visited us twice in the same year. We told them about our history of persecution and whatever we knew about Pargat Singh's death. The CBI actually had more information than we did. They told us that the Raja Sansi police had faked the encounter of Pargat Singh. They said that some woman had admitted Pargat Singh to the hospital ten days earlier because of pain in his appendix. Then, on November 4, 1992, Raja Sansi police abducted Pargat Singh from the hospital and then cremated him at Durgiana Mandir the next day.

¹⁷⁹ Ensaaf interview with K. Singh, Amritsar, April 8, 2007.

¹⁸⁰ Annexure A of Writ Petition (Crl.) No. 447 of 1995, *Committee for Information and Initiative on Punjab v. State of Punjab and Others*, April 3, 1995.

They further said that Sub-Inspector[Name withheld]of Raja Sansi Police was the main accused.¹⁸¹

K. Singh described the lack of court proceedings:

In 2001, we received a letter from the CBI Patiala telling us to come to court to give testimony. About ten days later, I went to Patiala to the address indicated on the letter. I went to some government office. There, someone told me to go to an attorney's office. I went to that attorney's office and met a clerk. The clerk told me to return in about a month. I went back a month later to the clerk. The clerk told me that if we wanted to fight our case, we would have to give him 20,000 rupees—5,000 for him and 15,000 for the attorney. I told him that we had no ability to pay that amount and left. After that, the CBI never contacted us again. We have no idea if the CBI ever prosecuted anybody for Pargat Singh's murder.¹⁸²

Baldev Singh continues to dispute which Pargat Singh was killed and cremated on November 5, 1992. The CBI acknowledges the cremation of a Pargat Singh, but still insists he was the son of G. Singh.

The killing of Piyara Singh

In July 1996, the Supreme Court ordered the CBI to register a case regarding the killing of Piyara Singh.¹⁸³ Piyara Singh's son Balraj Singh, however, told Ensaaf that the CBI approached the family only twice during its investigation and the family has no knowledge of any criminal prosecution pursued in response to the Supreme Court order.

Balraj Singh said that a police team arrested his father in 1987 and tortured him for five to six days. In 1989, a police force arrested his father at his home and brutally

¹⁸¹ Ensaaf interview with K. Singh, Amritsar, April 8, 2007.

¹⁸² Ibid.

¹⁸³ Order dated July 22, 1996. Writ Petitions (Crl.) Nos. 497 and 447 of 1995. Copy on file with Ensaaf.

tortured him, using a heavy roller, suspending him, tearing his legs, pulling his nails out of his feet, and impaling his legs with sharp, heated iron rods. In 1990, out of fear of the police, Piyara Singh moved to Uttar Pradesh to live with his sister.

In 1992, Balraj Singh was visiting his father in Uttar Pradesh when the police came to the village disguised as a group of doctors:

They approached my father's neighbors, saying they wanted the presence of a prominent person to inaugurate a hospital. The neighbors mentioned my father, but said that he wasn't home. The police said that they would wait nearby and asked the neighbors to signal them when my father returned.

When my father returned home and entered the house, about 10 to 12 policemen rushed in after him and tackled me and my father. They tied our arms behind our backs and took us away on a mini truck.¹⁸⁴

The police took Balraj Singh and his father Piyara Singh to the B.R. Model School Interrogation Center, and placed them about three cells apart:

They started torturing my father. I could hear his screams into the morning. That night, around 9 p.m., they came for me and tortured me for about an hour. But they tortured my father continuously for three days. I could hear his screams the entire time. After the third day, I could no longer hear him, so I assumed they had tortured him to death.¹⁸⁵

After his release over two weeks later, Balraj Singh learned that the police reported that his father had been killed in an encounter. He further learned from his family that his grandfather and Jaswant Singh Khalra had gone to Durgiana Mandir

¹⁸⁴ Ensaaf interview with Balraj Singh, Amritsar, April 9, 2007.

¹⁸⁵ Ibid.

cremation ground and spoken with a cremation ground worker. Khalra knew Piyara Singh because they were both bank directors.

According to Balraj Singh, the family did not hear from the CBI again after 1996.

C. The murder of Jaswant Singh Khalra: Intimidation of witnesses and superior responsibility

In the early 1990s, human rights defender Jaswant Singh Khalra joined the Human Rights Wing of the political party Akali Dal.¹⁸⁶ In 1994, while investigating the disappearance of a personal friend, Khalra discovered that the police had secretly cremated his body at Durgiana Mandir cremation ground in Amritsar district. Khalra launched a wider investigation into secret cremations.¹⁸⁷

In January 1995, Jaswant Singh Khalra and his colleague Jaspal Singh Dhillon released a report on mass illegal cremations using government records. KPS Gill, the director general of police (DGP) in Punjab, responded to their evidence by accusing Pakistan's Inter-Services Intelligence (ISI) of trying to destroy peace in Punjab and alleging that most of the "disappeared" persons were living abroad.¹⁸⁸ Khalra discussed DGP Gill's statements in April 1995:

KPS Gill said in a press conference in Amritsar, 'These Human Rights Wing folks—they're not doing anything on human rights. They have one motive, to prop up their agenda, so there is no peace in Punjab. They are ISI agents, and they are hatching a conspiracy to discourage the police machinery and re-incite militancy.' KPS Gill went to the extent of saying, 'I'll tell you where those kids are.' He said, 'These kids are in Europe, in Canada, and in America, where they are earning their daily wages. And these human rights organizations are telling us

¹⁸⁶ Ram Narayan Kumar et al., *Reduced to Ashes*, p. 53.

¹⁸⁷ *Ibid.*, p. 54.

¹⁸⁸ Writ Petition (Civil) No. 16777 of 2006, *Paramjit Kaur Khalra v. State of Punjab and Others* (Gill Petition), (Admitted on October 23, 2006), List of dates and events. See also Gill Petition, Annexure P-2, "'Missing Persons' not killed: Gill," *Tribune* (Chandigarh), January 19, 2005.

that thousands of kids have disappeared.’ This was a challenge to us.
This was a challenge to that truth which we sought to bring forward.¹⁸⁹

Khalra challenged DGP Gill to an open debate on the evidence.¹⁹⁰ In February 1995, at a press conference, Khalra publicly disclosed the death threats made to him because of his human rights work.¹⁹¹ He also discussed these death threats with various other individuals, especially threats made by the Tarn Taran police under the command of Senior Superintendent of Police (SSP) Ajit S. Sandhu, who had been transferred back to Tarn Taran district after Khalra released his investigative report.¹⁹² Sandhu allegedly threatened Khalra that he, too, would become an unidentified dead body.¹⁹³ In March, the police tried to discredit Khalra by alleging that he had links with a militant group.¹⁹⁴ Khalra continued to expose police officials, speaking throughout Punjab and North America on the issue.

On the morning of September 6, 1995, the Punjab police abducted Jaswant Singh Khalra. Rajiv Singh, a reporter who was present at the Khalra residence, witnessed the abduction and identified the police officers involved. Rajiv Singh saw three uniformed policemen and one policeman in civilian clothes exit a Maruti van. According to Rajiv Singh, two of the police officers, Station House Officer (SHO) Satnam Singh of Police Station Chabal and Head Constable (HC) Prithipal Singh of Police Post Manochahal, carried carbines, and Deputy Superintendent of Police (DSP) Jaspal Singh, also uniformed, had a walkie-talkie set. DSP Ashok Kumar sat in the front seat of the Maruti gypsy, or jeep, on the left side of the driver’s seat. Surinderpal Singh, SHO of Police Station Sarhali, sat in the front seat as well. Rajiv

¹⁸⁹ Ensaaf, “Sardar Jaswant Singh Khalra,” video report, 2006, <http://www.ensaaf.org/docs/khalravideo.php> (accessed April 13, 2007). See also Gill Petition, Annexure P-2, “‘Missing persons’ not killed: Gill,” *Tribune* (Chandigarh), Jan. 19, 2005 (reporting that Gill stated that missing persons had gone abroad and the ISI was trying to revive the militancy in Punjab).

¹⁹⁰ Gill Petition, List of dates and events: January 20, 1995. See also Gill Petition, Annexure P-3/T.

¹⁹¹ Gill Petition, List of dates and events: February 27, 1995.

¹⁹² *State (CBI) v. Ajit Singh Sandhu & Others*, Additional Sessions Judge Bhupinder Singh, Patiala, Session No. 49-T of 9.5.1998/30.11.2001, Judgment, November 18, 2005 (*State v. Ajit Singh Sandhu & Others* judgment), paras. 14, 17.

¹⁹³ *State v. Ajit Singh Sandhu & Others* judgment, paras. 13, 14. Copy on file with Ensaaf.

¹⁹⁴ Gill Petition, List of dates and events, March 23, 1995. See also, Counter-Affidavit by Sukhdev S. Chhina, SP (City) Amritsar, on Behalf of Respondents 1, 2, and 5, dated September 25, 1995, *Paramjit Kaur v. State of Punjab*, Writ Petition (Crl.) No. 497 of 1995, para. 8. Copy on file with Ensaaf.

Singh further observed five to six uniformed policemen sitting in the back of the Maruti gypsy; one of them was Jasbir Singh, in-charge of Police Post Manochahal, another was Assistant Sub-Inspector (ASI) Amarjit Singh, and a third was Avtar Singh Sona, son of SSP Sandhu's nephew Jagbir S. Sandhu.¹⁹⁵

Rajiv Singh heard DSP Jaspal Singh tell Khalra that SSP Sandhu wanted to meet him. Khalra was forcibly placed between DSP Jaspal Singh and HC Prithipal Singh in the van. Rajiv Singh then heard DSP Jaspal Singh make a call on the walkie-talkie and state that the work was completed.¹⁹⁶ Khalra was then taken away in the Maruti van, followed by the Maruti gypsy. Kirpal Singh Randhawa, a resident of the same neighborhood, also claimed to have seen the vehicles.¹⁹⁷

After the abduction, Rajiv Singh called Paramjit Kaur, Khalra's wife, and informed her of the abduction. She immediately came home from work and, accompanied by Rajiv Singh, went to Islamabad Police Station to make further inquiries. She then informed her family and husband's colleagues, and also sent telegrams to the chief minister of Punjab, director general of police, chief justice of India, and chief justice of the Punjab and Haryana High Court, among others.¹⁹⁸ A few days later, Paramjit Kaur filed a habeas petition in the Supreme Court. Khalra's abduction by the police was never recorded in police records,¹⁹⁹ and the police maintained that there was no criminal case against him and thus no reason to arrest him.²⁰⁰

As a court subsequently confirmed, the Punjab police illegally detained and tortured Khalra for almost two months before killing him in late October 1995 and, discarding his body in the Harike canal in Amritsar, Punjab.²⁰¹ Several days prior to his murder,

¹⁹⁵ *State v. Ajit Singh Sandhu & Others* judgment, para. 15.

¹⁹⁶ *Ibid.*, para. 15.

¹⁹⁷ *Ibid.*, para. 16.

¹⁹⁸ *Ibid.*, para. 15.

¹⁹⁹ Charge Sheet against police officers with brief report submitted by AS Joshi DSP CBI (New Delhi), pg 6. Case No. RC.14/S/95/DLI. Oct. 30, 1996. Copy on file with Ensaaf.

²⁰⁰ Counter-Affidavit by Sukhdev S. Chhina, para. 1.

²⁰¹ *State v. Ajit Singh Sandhu & Others* judgment, paras. 28, 31.

the police allegedly took Khalra to SSP Sandhu's residence, where KPS Gill allegedly joined them and interrogated Khalra for half an hour. On the ride back to the police station, SHO Satnam Singh told Khalra that if he had listened to DGP Gill's advice, he would have saved his life.²⁰²

In November 1995, the Supreme Court directed the CBI to investigate the kidnapping of Jaswant Singh Khalra.²⁰³ The CBI filed a charge sheet against nine police officers from Tarn Taran district on October 30, 1996, but did not arrest any of the accused.²⁰⁴ Initially, the CBI only charged the police officers with kidnapping and illegal confinement, and not torture or murder.²⁰⁵ After Paramjit Kaur Khalra's attorney intervened in 1997,²⁰⁶ the court revised the charges to include murder charges against three of the officials.²⁰⁷

On November 18, 2005, over ten years after Paramjit Kaur Khalra filed a habeas corpus petition regarding her husband's abduction, Additional Sessions Judge Bhupinder Singh convicted and sentenced six Punjab police officers for their roles in the abduction and murder of Khalra.²⁰⁸ Two other police officers—SSP Sandhu and DSP Ashok Kumar—died during the course of the trial, and one other police officer was not prosecuted and discharged.²⁰⁹ The convicted police officers have appealed the convictions.²¹⁰ Paramjit Kaur Khalra has appealed the leniency of the sentences,

²⁰² Ibid., para. 17.

²⁰³ Order of the Supreme Court dated November 15, 1995, *Paramjit Kaur v. State of Punjab*, Writ Petition (Crl.) No. 497 of 1995. Copy on file with Ensaaf.

²⁰⁴ Gill Petition, List of dates and events.

²⁰⁵ Charge Sheet, Oct. 30, 1996—all charges u/s 120-B read with 365, 220 IPC.

²⁰⁶ Order of Special Judicial Magistrate dated September 3, 1997, *State (CBI) v. Ajit S. Sandhu & Others*, para.13. The order allowed Paramjit Kaur Khalra's attorney to participate under the directions of the Public prosecutor. Copy on file with Ensaaf.

²⁰⁷ Order of Sessions Judge K.S. Garewal, Patiala, dated July 25, 1998, *State v. Ajit Singh Sandhu & Others*, para. 12: "[P]rima facie cases are made out against the accused as under: 1. Under S.120-B IPC against all of the accused. 2. Under S. 364/34 IPC against Ashok Kumar, Surinder Pal Singh, Satnam Singh, Jasbir Singh and Prithpal Singh accused. 3. Under S.302/34 IPC and 201 IPC against Jaspal Singh, Amarjit Singh and Rachhpal Singh." Copy on file with Ensaaf.

²⁰⁸ *State v. Ajit Singh Sandhu & Others* judgment.

²⁰⁹ A revision petition is pending against the acquittal of Rachhpal Singh. Crim. Revision Petition No. 1814 of 2005. *Paramjit Kaur Khalra v. State of Punjab*, July 30, 2005.

²¹⁰ See, for example, Criminal Appeal No. 865-DB of 2005, *Jaspal Singh v. State of Punjab*, admitted on December 8, 2005. Copy on file with Ensaaf.

arguing that all who gave orders or otherwise participated in the murder should receive life sentences.²¹¹ The CBI has not filed any appeal.²¹²

While the convictions of lower-level officers more than a decade after the murder represent an exception to the impunity otherwise enjoyed by the security forces for serious abuses committed during the counterinsurgency, even in this case justice has not been done. The truth has not been established, the most responsible senior police officials have not been charged, and the proceedings that have taken place have been marred by inordinate delays and egregious intimidation and harassment of witnesses.

There is even evidence that some of the officers convicted in 2006 are receiving special treatment. Individuals have informed Khalra's widow that they have seen some of the convicted police officers out during weekends at bars, clubs and hotels, suggesting that they are periodically released from jail.²¹³ Mrs. Khalra's attorney Rajvinder S. Bains informed Ensaaf that DSP Jaspal Singh has stayed at home in Hoshiarpur when he was supposedly transferred to a local Hoshiarpur jail for cases proceeding against him in a local court.²¹⁴

Prior to the conviction, moreover, in part due to the slowness of the proceedings and the CBI's failure to make arrests, the accused repeatedly intimidated and threatened witnesses.

Police have retaliated against activists by implicating five of the key witnesses—Khalra's wife Paramjit Kaur, as well as Kulwant Singh, Kikar Singh, Rajiv Singh, and Kirpal Singh Randhawa—in false criminal cases, ranging from bribery, rape, and robbery, to establishing a terrorist organization.²¹⁵ The police arrested Rajiv Singh,

²¹¹ Criminal Revision No. 323 of 2006, *Paramjit Kaur Khalra v. State of Punjab and Others*, admitted on December 12, 2006.

²¹² Gill Petition, para.12.

²¹³ Ensaaf interview with Paramjit Kaur Khalra, Amritsar, March 27, 2007. See also, "Khalra Panel Cries Foul," *Tribune* (Chandigarh), Dec. 1, 2005 at <http://www.tribuneindia.com/2005/20051201/punjab1.htm#14> (accessed May 1, 2005).

²¹⁴ Ensaaf telephone interview with Rajvinder S. Bains, September 10, 2007. The next hearing in this case of Jaspal Singh's jailbreaks will be on November 23, 2007.

²¹⁵ Written Arguments of R.S. Bains in the matter of RC-IV/S/95-SCB-1, *State v. Ajit Singh Sandhu & Others*, filed November 8, 2005, para. 8.

the witness to Khalra's abduction, at least twice to prevent his appearing in court to testify, and implicated him in a total of four cases, including the forming of a terrorist organization.²¹⁶ The Punjab State Human Rights Commission investigated the terrorism charge and concluded that the police falsely implicated him.²¹⁷ In 2004, prior to his testimony in the Khalra case, the police falsely implicated another eyewitness to the abduction, Kirpal Singh Randhawa, in a rape case, and accused both him and Rajiv Singh of allegedly threatening a witness in the rape case.²¹⁸

The police further threatened Kulwant Singh, who saw and spoke to Khalra in custody on September 6, 1995, the day of Khalra's abduction.²¹⁹ Kulwant Singh said that he was brought to the office of SSP Sandhu and questioned about Khalra by Sandhu, Station House Officer (SHO) Satnam Singh and Deputy Superintendent of Police (DSP) Jaspal Singh, three of the accused police officers.²²⁰ Kulwant Singh stated in his trial testimony that police officers threatened and asked him not to meet CBI officials in connection with the Khalra case.²²¹

Police harassment appears to have been the reason Kikar Singh turned hostile during trial. Kikar Singh initially told the CBI that he saw Khalra in police custody at Police Station Kang on October 24, 1995, witnessed signs of torture on his body, and helped him eat:

At the time the hair of his [Khalra's] beard and head had been plucked and he had blue marks of bruises under his eyes. His fingernails were

²¹⁶ Amnesty International, "Break the Cycle of Impunity and Torture in Punjab," January 2003, <http://web.amnesty.org/library/Index/engASA200022003?OpenDocument&of=COUNTRIES%5CINDIA> (accessed May 4, 2007), p. 9. Written Arguments of R.S. Bains, para. 8.

²¹⁷ Written Arguments of R.S. Bains, para. 8. Statement of Rajiv Singh s/o Parkash Singh in court, Prosecution Witness 15, *State v. Ajit Singh Sandhu & Others*, February 2, 2005. Copy on file with Ensaaf.

²¹⁸ Written Arguments of R.S. Bains, para. 8.

²¹⁹ Statement of Kulwant Singh s/o Udhm Singh, Prosecution Witness 14, *State v. Ajit Singh Sandhu & Others*, January 6, 2004. Copy on file with Ensaaf. See also, Written Arguments, para. 8, citing Kulwant Singh's acquittal and judgment, 1998(1) RCR 846.

²²⁰ *State v. Ajit Singh Sandhu & Others* judgment, para. 17.

²²¹ Statement of Kulwant Singh s/o Udhm Singh, Prosecution Witness 14, *State v. Ajit Singh Sandhu & Others*, January 6, 2004. Copy on file with Ensaaf.

also blue. He had bruises on his body. He could not eat his food with his hands. I fed him food with my own hands. After eating the food he was taken out by the sentry and Jaswant Singh Khalra was not even able to walk properly. I helped him by supporting him with a shoulder along with another person in civilian clothes.²²²

After giving his statement to the CBI, Kikar Singh repeatedly asked for protection.²²³ The protection was ineffectual. In his affidavit of August 29, 1996, Kikar Singh stated that SSP Sandhu and DSP Jaspal Singh were pressuring him to turn hostile by implicating his father and relatives in false cases and by conducting raids on his house.²²⁴ They forcibly took possession of his house and farm on August 25, 1996 in connivance with Kikar Singh's security guard.²²⁵ After spending time in judicial custody, Kikar Singh turned hostile in Khalra's case, denying any knowledge of Khalra, that they had been in illegal detention together, or that he had made two previous statements to the CBI regarding his knowledge of abuses against Khalra.²²⁶

Police officers appear to have intimidated a key witness into filing a false bribery case against Paramjit Kaur Khalra and her supporters. In March 1998, officers implicated in Khalra's abduction visited Special Police Officer (SPO) Kuldeep Singh, who had witnessed Khalra's illegal detention, torture, and the disposal of his body. The police officers intimidated SPO Kuldeep Singh into filing false bribery charges against Paramjit Kaur Khalra, threatening him and his wife with disappearance.²²⁷ The charges against Paramjit Kaur Khalra were quashed after SPO Kuldeep Singh's

²²² Statement of Kikar Singh, s/o Harbans Singh, recorded by P. L. Meena, deputy superintendent of the CBI on May 29, 1996 in case RC 14(S)95/S.C.B. DLI (translated from Hindi original). Copy on file with Ensaaf.

²²³ Order of the Supreme Court dated July 30, 1996, *Paramjit Kaur v. State of Punjab*, Writ Petition (Crl.) No. 497 of 1995. Copy on file with Ensaaf. The Court ordered protection for Kikar Singh and other witnesses. See also, Affidavit of Kikar Singh s/o Harbans Singh, (*Paramjit Kaur v. State of Punjab*, Writ Petition (Crl.) No. 497 of 1995) Supreme Court of India, August 29, 1996, para. 1. Copy on file with Ensaaf.

²²⁴ Affidavit of Kikar Singh s/o Harbans Singh, para. 3.

²²⁵ Affidavit of Kikar Singh s/o Harbans Singh, paras. 3-5.

²²⁶ Statement of Kikar Singh s/o Harbans Singh, Prosecution Witness 1, *State v. Ajit Singh Sandhu & Others*, 2002. Copy on file with Ensaaf. The owner of the vehicle used by the police in the abduction also turned hostile, warranting further investigation.

²²⁷ *State v. Ajit Singh Sandhu & Others* judgment, para. 30.

family denied his statement and human rights groups drew attention to the case.²²⁸ In November 2004, SPO Kuldip Singh expressed no confidence in Punjab police security and requested that a Central Reserve Police Force (CRPF) vehicle replace the Punjab police vehicle that was bringing him to court.²²⁹

The CBI's failure to charge Punjab Director General of Police (DGP) KPS Gill for his role in the abuses against Khalra highlights serious failures in the prosecuting authority of the CBI. To address the CBI's failure to charge KPS Gill, Paramjit Kaur Khalra petitioned the court to allow her lawyers to intervene in the case. In a September 1997 order, the special judicial magistrate allowed her lawyers to argue, examine, and cross-examine witnesses, while acting under the directions of the public prosecutor.²³⁰

In 1997, after SSP Sandhu committed suicide, SPO Kuldip Singh approached the CBI with direct information on the abuses against Khalra. He said he had been too afraid to disclose this information while Sandhu was alive.²³¹ SPO Kuldip Singh had served under SSP Sandhu since 1994, specifically as the bodyguard of SHO Satnam Singh, another accused in the Khalra case.²³² In February 1995, when SSP Sandhu was transferred back to Tarn Taran after Khalra announced his discoveries, SPO Kuldip Singh and SHO Satnam Singh were also transferred with him.²³³ In his statement to the CBI, SPO Kuldip Singh described how he had been appointed to guard the room where Khalra was detained, and discussed the role of different officers, including the senior-most officer, DGP Gill, in the abuses against Khalra.²³⁴

²²⁸ Ibid.

²²⁹ "Khalra witness wants CRPF vehicle," *Tribune* (Chandigarh), Nov. 4, 2004, <http://www.tribuneindia.com/2004/20041104/punjab1.htm#7> (accessed May 4, 2007).

²³⁰ Order of Special Judicial Magistrate, CBI, Patiala, September. 3, 1997. Copy on file with Ensaaf.

²³¹ Statement of Kuldip Singh s/o Harbans Singh, Prosecution Witness 16, *State v. Ajit Singh Sandhu & Others*, February 16, 2005. Copy on file with Ensaaf.

²³² *State v. Ajit Singh Sandhu & Others* judgment, para. 17.

²³³ Ibid.

²³⁴ Closure report in the matter of RC 14/S/95-SCB-1-New Delhi regarding report u/s 173 (VIII) Criminal Procedure Code ("Closure report"), Court of Special Magistrate, Patiala, para. 4. submitted September 22, 1999 by investigating officer, DSP, CBI/SIC-IV New Delhi. Copy on file with Ensaaf.

The CBI appears to have actively worked to prevent the addition of Kuldeep Singh as a witness in the trial. According to Kuldeep Singh, SHO Satnam Singh told him on March 22, 1998, that the CBI officials who had recorded his statement had apologized to KPS Gill under pressure from the central government.²³⁵ On August 12, 1998, Paramjit Kaur filed an application in court for a direction to the CBI to present the supplementary charge sheet with the statement of Kuldeep Singh.²³⁶ The CBI opposed this application, as did the accused; the court, however, ordered the CBI to present its supplementary report within a month.²³⁷ In its report, the CBI stated that they refused to add Kuldeep Singh as a witness because his statement did not “inspire confidence” since it had been made two-and-a-half-years after Khalra’s abduction; they imputed his making the statement to his failure to secure a job in the Punjab police.²³⁸ According to the CBI, other police officers stated they had no knowledge of Khalra’s detention and KPS Gill also denied his role.²³⁹ Mrs. Khalra filed another application through her attorney in January 2000 arguing for Kuldeep Singh to be added as a witness, which the CBI opposed.²⁴⁰ Only in October 2000, by order of the sessions judge, was Kuldeep Singh added as a prosecution witness.²⁴¹ The sessions judge found Kuldeep Singh to be a material witness whose credibility could be assessed during cross-examination in trial.²⁴²

In February 2005, SPO Kuldeep Singh gave his testimony in court and explained the sequence of events leading to Khalra’s custodial torture and murder, including the role of KPS Gill. He described how, in October 1995, he was handed the key of a room in Police Station Chabal by SHO Satnam Singh. SHO Satnam Singh told him that a man was being detained there and that he must serve him meals and keep his

²³⁵ Statement of Kuldeep Singh s/o Harbans Singh, Prosecution Witness 16, *State v. Ajit Singh Sandhu & Others*, February 16, 2005. Copy on file with Ensaaf.

²³⁶ Order of Sessions Judge dated October 9, 2000, *State v. Ajit Singh Sandhu & Others*, para. 6.

²³⁷ Order of Sessions Judge dated April 9, 1999, *State v. Ajit Singh Sandhu & Others*, paras. 1, 4.

²³⁸ Closure report, para. 13. See also, Statement of K.S. Joshi, Superintendent, CBI, Prosecution Witness 19, March 23, 2005; Order of Sessions Judge dated October 9, 2000, *State v. Ajit Singh Sandhu & Others*, para. 8. Copies on file with Ensaaf.

²³⁹ Closure report, paras. 9-10.

²⁴⁰ Gill Petition, Annexure P-8 (CBI Reply to Petition, filed September 29, 2000 by Public Prosecutor H. Qureshi, CBI SCB-1: New Delhi).

²⁴¹ Order of Sessions Judge dated October 9, 2000, *State v. Ajit Singh Sandhu & Others*.

²⁴² Order of Sessions Judge dated October 9, 2000, *State v. Ajit Singh Sandhu & Others*, para. 15.

detention secret.²⁴³ SPO Kuldeep Singh opened the door and saw Khalra there; his clothes were torn and there were bruises on his body.²⁴⁴ He described how he witnessed beatings of Khalra by the accused officers because Khalra had refused to stop his human rights work.²⁴⁵ One day, the police officers took Khalra to SSP Sandhu's residence:

The condition of Sh. Jaswant Singh Khalra was not good as he had suffered beatings and was not able to walk and was brought to the car by me and Sh. Satnam Singh by holding him from arms. His wrist joints were swollen at that time and he was not able to even take his meals properly. He was also unable to go to answer the call of the nature. We had to support him for doing so.²⁴⁶

Thereafter, he said, KPS Gill visited SSP Sandhu's house and interrogated Khalra for half an hour, and thus witnessed that Khalra could barely move from the torture he had experienced at the hands of Gill's subordinate officers.²⁴⁷ SPO Kuldeep Singh further testified that SHO Satnam Singh told Khalra to accept KPS Gill's advice and save himself.²⁴⁸ SPO Kuldeep Singh further described Khalra's murder and the disposal of his dead body in Harike canal.²⁴⁹

SPO Kuldeep Singh's testimony established that DGP Gill defied Supreme Court orders regarding Khalra's habeas petition. On September 6, 1995, Paramjit Kaur Khalra sent Gill a telegram informing him of her husband's abduction.²⁵⁰ On September 11, 1995,

²⁴³ *State v. Ajit Singh Sandhu & Others* judgment, para. 17. See also Statement of Kuldeep Singh s/o Harbans Singh, Prosecution Witness 16, *State v. Ajit Singh Sandhu & Others*, February 16, 2005. Copies on file with Ensaaf.

²⁴⁴ *State v. Ajit Singh Sandhu & Others* judgment, para. 17.

²⁴⁵ *Ibid.*

²⁴⁶ Statement of Kuldeep Singh s/o Harbans Singh, Prosecution Witness 16, *State v. Ajit Singh Sandhu & Others*, February 16, 2005.

²⁴⁷ *State v. Ajit Singh Sandhu & Others* judgment, para. 17.

²⁴⁸ *Ibid.*

²⁴⁹ *Ibid.*, para. 28.

²⁵⁰ Statement of Paramjit Kaur, Prosecution Witness 2, *State v. Ajit Singh Sandhu & Others*, September 4, 2002. See also, *Paramjit Kaur v. State of Punjab*, Writ Petition (Criminal) No. 497 of 1995, List of Dates and Events (C). Copy on file with Ensaaf.

five days after Punjab police abducted Khalra, the Supreme Court issued formal notice and service to DGP Gill of the habeas corpus petition filed by Khalra's wife.²⁵¹ Despite receiving this formal notice, DGP Gill failed to disclose Khalra's whereabouts while Khalra was alive. On November 15, 1995, the Supreme Court ordered the CBI to inquire into Khalra's "disappearance" because the police investigation had not yielded any results. The Court further directed DGP Gill to "render all assistance and help to the CBI."²⁵²

According to the judge who passed the final order, Kuldip Singh "did respond properly to all the queries put forward to him by the defense counsel who could not shake his veracity despite detailed and lengthy cross-examination of this witness."²⁵³ The judge found that the in-court statements made by Kuldip Singh were "fully consistent" with the statements he had given earlier to the CBI.²⁵⁴

Despite this detailed and consistent information, accepted now as findings of fact by a court of law, the CBI has failed to initiate an investigation of KPS Gill's role in the abduction, torture, and murder of Khalra. After writing twice to the CBI requesting that it initiate an independent investigation and bring charges against former DGP Gill,²⁵⁵ with no reply,²⁵⁶ on September 6, 2006, Mrs. Khalra filed a petition in the High Court.²⁵⁷ Over a year later, this petition has yet to have a substantive hearing.²⁵⁸

One of the greatest obstacles to combating impunity is the failure to hold superior officials accountable. The international law doctrine of superior responsibility imposes liability on superiors for the unlawful acts of their subordinates, where the

²⁵¹ *Paramjit Kaur v. State of Punjab*, 1996 SC (7) 20, November 15, 1995. Copy on file with Ensaaf.

²⁵² *Ibid.*

²⁵³ *State v. Ajit Singh Sandhu & Others* judgment, para. 26.

²⁵⁴ *Ibid.*

²⁵⁵ Gill Petition, Annexures P-13, P-14, Representations to CBI, December 5, 2005 (For further investigation in case no. RC No. 14(S)/95/Dellhi, under Sections 120-B, 364, 302, 201 read with Section 34 IPC) and January 15, 2006.

²⁵⁶ Gill Petition, para. 11.

²⁵⁷ Gill Petition.

²⁵⁸ Ensaaf interview with Rajvinder S Bains, Chandigarh, September 15, 2007.

superior knew or had reason to know of the unlawful acts, and failed to take necessary and reasonable measures to prevent or punish those acts.²⁵⁹ Based on his acts and omissions, the Punjab Director General of Police, KPS Gill, could be liable under the doctrine for Khalra's abduction, illegal detention, torture, and murder. The evidence suggests that Gill himself participated in crimes against Khalra, and failed to rescue or order Khalra's release when he knew Khalra was being ill-treated.

A superior-subordinate relationship exists if the superior possesses "effective control" over a subordinate,²⁶⁰ which includes the ability to prevent or punish the commission of offenses.²⁶¹ By his own admission, Gill exercised effective control over the Punjab police, and had intimate knowledge about the functioning of individual police stations.²⁶² Gill wrote that he created an "active and accountable police leadership" and described how he worked to be a leader who led "from the front."²⁶³ His de jure command, as evidenced by his own admissions and the high-level tasks he performed, creates a presumption of effective control.²⁶⁴ His de facto command over his subordinates also demonstrates his effective control, as evidenced by his ability to issue orders that were followed.²⁶⁵ Moreover, Gill was in a position to prevent and punish offenses with the power to initiate investigations and

²⁵⁹ *Prosecutor v. Kordic and Cerkez*, International Criminal Tribunal for the former Yugoslavia, Case No. IT-95-14/2-T, Judgment (Appeals Chamber), December 17, 2004, para. 449 ("Kordic Appeals Chamber"); *Prosecutor v. Blaskic*, ICTY, Case No. IT-95-14-T, Judgment (Trial Chambers), March 3, 2000, para. 294; see also *Prosecutor v. Bagilishema*, International Criminal Tribunal for Rwanda, Case No. ICTR-95-1A-T, Judgment, 7 June 2001, para. 38 ("Bagilishema Trial Chambers").

²⁶⁰ *Prosecutor v. Kayishema*, ICTR, Case No. 95-1-T, Judgment (Trial Chambers), May 21, 1999, para. 229 ("Kayishema Trial Chambers"). See also Kordic Appeals Chamber, para. 462; *Prosecutor v. Blagojevic and Jokic*, ICTY, Case No. IT-02-60-T, Judgment (Trial Chambers), January 17, 2005, para. 791 ("Blagojevic Trial Chambers").

²⁶¹ Blagojevic Trial Chambers, para. 791. The power to prevent or punish the commission of offenses is also demonstrated by: the power to initiate investigations and discipline subordinates, rewarding subordinates, meeting subordinates and receiving communications rendered through the chain of command. Bagilishema Trial Chambers, paras. 172-173; Kayishema Trial Chambers, paras. 501, 483.

²⁶² KPS Gill, "Endgame in Punjab: 1988-1993," 2001, South Asia Terrorism Portal, <http://www.satp.org/satporgtp/publication/faultlines/volume1/Fault1-kpstext.htm> (accessed May 4, 2007).

²⁶³ Ibid.

²⁶⁴ *Prosecutor v. Zejnir Delalic, Zdravko Mucic, Hazim Delic and Esad Landzo*, ICTY, Case No. IT-96-21-T, Judgment (Appeals Chamber), February 29, 2001, para. 197 ("Delalic Appeals Chamber"). In cases of de jure command, "a court may presume that possession of such power prima facie results in effective control unless proof to the contrary is produced."

²⁶⁵ Giving orders which are followed is a substantial indication that a superior possesses effective control over his subordinates. See *Prosecutor v. Serushago*, ICTR, Case No. ICTR-98-39-S, Judgment (Trial Chambers), February 15, 1999, para. 29; *Prosecutor v. Blaskic*, Case No. IT-95-14-A, Judgment (Appeals Chambers), July 29, 2004, para. 69.

discipline subordinates.²⁶⁶ In September 1992, Gill himself said that his office was investigating more than 30 allegations of police wrongdoing and had fired more than fifty officers for misconduct.²⁶⁷ Furthermore, Gill thoroughly exercised his powers to reward and promote subordinates,²⁶⁸ and demanded regular communications and meetings with subordinates.²⁶⁹ All of these factors demonstrate that Gill had effective control over the subordinates who committed the crimes against Jaswant Singh Khalsa.

KPS Gill appears to have had actual and constructive knowledge that his subordinates committed and/or were about to commit unlawful acts against Jaswant Singh Khalsa because he witnessed Khalsa's illegal detention and tortured body.²⁷⁰ Further, his position in the chain of command, the timing of the abduction after Khalsa exposed the mass cremations,²⁷¹ the extensive use of police infrastructure and personnel to commit the crimes, also are strong evidence of his actual knowledge of the crimes. In this case, there were no fewer than nine police officers involved in the operation to abduct Khalsa, including officers with the ranks of SSP, DSP, and inspector, who used

²⁶⁶ In 1989, Gill stated that he took "internal action" after investigating allegations of "excesses" committed by a senior superintendent of police (SSP), and took action against those involved in corruption. Amit Buruah, "We Have Done A Good Job"—Interview With KPS Gill, DGP," *Frontline*, April 29, 1989, 116. In early 1990, Gill told a visiting delegation of members of the European Parliament that, in the first two months of 1990, seven police officers had been suspended and one dismissed for "crimes against the populous." Amnesty International, "Human Rights Violations in Punjab: Use and Abuse of the Law," May 1991, <http://www.amnestyusa.org/countries/india/document.do?id=8D63FE02A44B98C8802569A600600B91>.

²⁶⁷ John Ward Anderson, "Punjab's Cycle of Violence: Villagers Suffer as Sikh Gunmen and Police Trade Attacks," *Washington Post*, September 2, 1992, p. A23.

²⁶⁸ Gill describes how he developed "a radical policy of postings and promotions." KPS Gill, "Endgame in Punjab: 1988-1993". See also, Shekhar Gupta and Kanwar Sandhu, "KPS Gill: True Grit," *India Today* (April 15, 1993), p.64 (DGP Gill promoted the best officers).

²⁶⁹ By his own description, Gill said that he made it his "practice to move constantly across the state" to meet with his subordinates. He identified the police stations most affected by the insurgency, catalogued their weaknesses, and then addressed them. Gill also received written reports from his subordinates. KPS Gill, "Endgame in Punjab: 1988-1993."

²⁷⁰ A superior's actual knowledge can be demonstrated through direct or circumstantial evidence. Delalic Trial Chambers, para. 383; see also Kordic Trial Chambers, para. 427 (same). A superior's actual knowledge is "easier to prove" if he is "part of an organized structure with established reporting and monitoring systems." Kordic Trial Chambers, para. 428. Additionally, the number and type of subordinates involved, type of illegal acts, and the identity and character traits of the individuals involved must be considered in establishing the superior's actual knowledge. Delalic Trial Chambers, para. 386. See also Delalic Appeals Chamber, para. 238.

²⁷¹ Based on the content of his findings and the timing after Khalsa released his investigative report and publicly spoke of the police threats against him, Judge Bhupinder Singh found that SSP Sandhu and his subordinates had a motive to kill Khalsa. *State v. Ajit Singh Sandhu & Others* judgment, paras. 13-14.

police radios, weapons, and unmarked vehicles to abduct Khalra.²⁷² Further, in May 1994, the Supreme Court heard a petition implicating the police abduction and disappearance of four Punjab human rights attorneys.²⁷³ At the time of Khalra's abduction, one of the accused, SSP Sandhu, had at least 19 charges against him.²⁷⁴

KPS Gill had reason to know, or constructive knowledge, of his subordinates' crimes against Khalra because of the number of complaints and court notices he received about Khalra's abduction and threats to Khalra's life, the information available in the public domain about the role of his subordinates in Khalra's abduction, and general information on the violent history of his subordinates. Despite this actual and constructive knowledge that his subordinates had committed and were about to commit unlawful acts against Khalra, Gill failed to take necessary and reasonable measures to prevent his subordinates from committing unlawful acts against Khalra or to punish them afterwards. Gill could have prevented his subordinates' crimes against Khalra with a simple release order and an order prohibiting further harm against Khalra. This measure was necessary because it was legally required by the Supreme Court and within his ability.

This case demonstrates the serious defects in the way the government has dealt with the abuses that accompanied the Punjab counterinsurgency operations. The lack of witness protection, the length of trials, duplicative investigations, the unwillingness to hold senior officials accountable, and government interference ensure that impunity for mass state crimes continues.

²⁷² *State v. Ajit Singh Sandhu & Others* judgment, paras. 15-18. Further, the Sessions Court, in convicting six officers for their roles in the abduction and murder of Khalra, specifically cited the use of at least two police stations to illegally detain Khalra: Chabal, where two individuals witnessed Khalra's detention, and Kang. *State v. Ajit Singh Sandhu & Others* judgment, paras. 17, 28.

²⁷³ Sukhwinder Singh Bhatti, abducted May 12, 1994; Kulwant Singh, his wife, and his baby, abducted in January 1993; Ranbir Singh Mansahia, abducted on September 12, 1991; and Jagwinder Singh, abducted on September 25, 1992. *Navkiran Singh & Ors. v. State of Punjab*, Writ Petition (Crl.) No. 242-258 of 1994, Supreme Court, July 2, 1995. Copy on file with Ensaaf.

²⁷⁴ Praveen Swami, "Forgotten War: Treatment of A.S. Sandhu Raises New Questions," *Frontline*, June 27, 1997, p.114.

D. The killing of Jugraj Singh: Police intimidation and failure of due process

The lack of justice in India is like a cancer. It's eating away at Indian society. But if you don't tell people about it, then it will never get cured. You can't be afraid to tell the truth.

-Mohinder Singh, father of Jugraj Singh

Unfortunately, the Khalra case is not an isolated example. The experience of Mohinder Singh in pursuing justice for the murder of his son Jugraj Singh also illustrates the role of the CBI in protecting the police, the intimidation of witnesses and petitioners, the failures of the judicial process, destruction of evidence by the police, and the lack of justice despite considerable efforts by affected families. It is further evidence that impunity continues to trump the rule of law in India.

On the morning of his abduction on January 14, 1995, Jugraj visited Mohinder Singh—they lived a few blocks apart in Mohali. Jugraj Singh told his father that he was going to the scooter market in Phase III B-2 to get his van fixed. When Mohinder Singh visited Jugraj Singh's house around 8 or 9 p.m. that evening, his daughter-in-law told him that Jugraj had not returned. After speaking to neighbors, they learned that people at the market were saying that the police had arrested Jugraj. Mohinder Singh recounted:

A lot of people at the market knew Jugraj so it's no surprise that they were talking about it. The day after the abduction the juice vendor, whose stall was in the market, told me that a blue Maruti car with license plate number PCO-42 parked at his stall around 7 a.m. and four plainclothes policemen stood around the car. When Jugraj passed the car in his van they jumped into the car and pulled out after him. The car overtook the van. Some of the men got out and signaled Jugraj. Jugraj stopped his van thinking they wanted a ride. They forced themselves into the van and took off towards Phase 8. Jugraj was a

regular customer of the juice vendor's and they knew each other well. A few days later, the juice vendor packed up and left.²⁷⁵

The next day, accompanied by two friends, Mohinder Singh went to the police station in Phase 8 to register a complaint:

I didn't go to the police station immediately because it was late and I didn't want to go alone.

At the police station we met with the clerk and told him that we wanted to register a complaint about the abduction. The SHO said that they would register our written complaint and find out in a few days where Jugraj was. We took a blank sheet of paper from the clerk and sat down and wrote-up the complaint. I wrote that police had abducted my son and I didn't know where he was and wanted the police to locate him. I gave the complaint to the clerk in the presence of the SHO. They didn't register the complaint in their Daily Diary Report or register a First Information Report (FIR).²⁷⁶

The following day, on Monday, January 16, Mohinder Singh went to the residence of Deputy Superintendent of Police (DSP) Gurpreet Singh Gill with a friend and an acquaintance of the DSP. He told Ensaaf:

The SP (Detective) was with the DSP at the time. I told the DSP about my son's abduction. The DSP asked for the engine and chassis numbers to Jugraj's Maruti van. He said that without it he couldn't trace Jugraj, but with it he could find him quickly.

²⁷⁵ Ensaaf interviews with Mohinder Singh, Ropar, March 13 to April 1, 2007.

²⁷⁶ Ibid.

In the meantime the SHO showed up. The DSP asked him if he had registered our case in the Daily Diary Report or registered an FIR. The SHO lied and said that he had.²⁷⁷

Mohinder Singh procured a copy of the van's registration certificate, which recorded the van's engine and chassis numbers and gave that copy to the DSP.

That same day, Mohinder Singh sent a telegram to the chief justice of the Punjab and Haryana High Court, asking the court to intervene and save his son's life.²⁷⁸ He also visited the market to verify the details of the arrest, and spoke to the owner of the shop next to the mechanic's shop, whom his family knew well. This man confirmed that he had seen Jugraj in his vehicle with police on January 14, and that the police had also at that time arrested another man called Sukhdev Singh from his shop and driven away towards Phase 8. The owner recognized the SHO seated in the vehicle that was used in the arrest of Sukhdev Singh, which was followed by Jugraj's vehicle.

The police did not register Mohinder Singh's complaint until Monday evening; it never registered his FIR. After calling Mohinder Singh to the police station on Monday evening, the police accompanied him to the market, where he witnessed them arrest the owner of the shop who had seen Jugraj in police custody:

We reached the market at 6 p.m. and the SHO arrived separately at the same time. At the market I explained to the SHO what the owner of the shop had told me. The SHO then forcefully grabbed the owner by the arm and dragged him into the jeep and took him away.

The SHO repeatedly asked me in a threatening manner: 'Was Sukhdev Singh your relative? Did he visit your house? Did you know he was a terrorist?' I said that I didn't know him so don't keep asking me and threatening me. He really tried to intimidate me at the market. The shop owner's father repeatedly asked the SHO why he was taking his

²⁷⁷ Ibid.

²⁷⁸ Copy of telegram on file with Ensaaf.

son. The SHO also threatened him and said: 'What's it to you?' The police left with the shop owner and we quietly came home.

Two to three days later the shop owner's father told me that he had gotten his son released that same evening. The police had badly beaten him. The father was upset with me for naming his son and asked my why I had implicated him. I said that I simply repeated what his son had told me. The police told the shop owner's father: 'You better get your son out of here [India] otherwise we're not going to let him go.' Within a month the shop owner's father had his son in Australia on a student visa.

I should never have told the police about any of the witnesses until the witnesses had a chance to record their statements in court. The police killed or intimidated all of them.²⁷⁹

On the morning of January 16, the newspapers carried statements from the SSP of Majitha, RS Khatra, that Majitha police had shot dead one Kashmiri Muslim militant and one Sikh militant in an encounter in Baba Bakala. (It was later established that the alleged Kashmiri militant was actually Jugraj Singh). A white Maruti van was also shown in one of the photographs, and the reports stated that the license of Sukhdev Singh had been recovered from the Sikh.²⁸⁰ However, on January 20, DGP KPS Gill issued a statement saying that the Sikh militant was not Sukhhdev Singh Sukhi but Didar Singh.²⁸¹

Following his son's arrest, Mohinder Singh met over 60 individuals in an attempt to gather information about his son, including the senior-most Punjab police officers, chief ministers and governors of Punjab, MLAs, MPs, judges, lawyers, journalists,

²⁷⁹ Ensaaf interviews with Mohinder Singh, Ropar, March 13 to April 1, 2007. The shop owner's father refused to give a statement to the CBI during its investigation, and told the CBI that his son had not left out of fear. Naresh Talwar, Inspector, CBI/SIC.I/New Delhi, Final Report under Section 173, Criminal Procedure Code, RC.4(S)/96-SIU.I.SIC.I/New Delhi, May 19, 2004. Copy on file with Ensaaf.

²⁸⁰ "Two Terrorists Killed in Majitha Police District," *Tribune* (Chandigarh), January 16, 1995. Copy on file with Ensaaf.

²⁸¹ "Claim that Identification of the Militant Killed in the Encounter is Didar Singh Dari," *Tribune* (Chandigarh), January 20, 1995. Copy on file with Ensaaf.

religious leaders, and many other individuals. None of them were able to help him resolve his son's "disappearance":

I was in a great deal of pain. I was deeply discouraged. Peace wouldn't come to my mind. I ran in any direction suggested in the hope that it might lead me to my son. But my son was gone. How was he going to come back?²⁸²

On January 30, in response to Mohinder Singh's telegram, the High Court issued notices to DSP Gurpreet Singh Gill and the superintendent of police of Ropar. Throughout the court proceedings, the police harassed Mohinder Singh, by coming to his home late at night and ringing the doorbell. After these incidents, Mohinder Singh would send complaints to senior police officers and members of the legislative assembly where he had worked.

Mohinder Singh described how he eventually recovered Jugraj's van, and how investigations that followed prompted the High Court to order a CBI inquiry:

While the High Court case was pending I filed an application with the court stating that the white Maruti van was mine and that I be allowed to recover it from Beas Police Station. The judge passed an order on March 8, 1996, stating that I could repossess the car at my own expense and hand it over to the CRPF at the High Court.

The van was outside in the police grounds at the back of the main building. The police had completely finished it. They had removed the windows, the wheels, tires, the carburetor, everything was lying outside. They had welded the engine back in on one side instead of bolting it, probably because they had misplaced the bolts when they had removed it to destroy the engine number.²⁸³

²⁸² Ensaaf interviews with Mohinder Singh, Ropar, March 13 to April 1, 2007.

²⁸³ Ibid. See also, Crim. Misc. No. 92 of 1995 in Writ Petition (Crl.) No. 87 of 1995, *Mohinder Singh v. State of Punjab*, Order of the High Court, March 8, 1996. Copy on file with Ensaaf.

The following day, Mohinder Singh arranged for a photographer to take pictures of the van so that its current state could be compared to earlier pictures of it. After reviewing the recent and old photos, the judge ordered the CBI investigation on April 23, 1996.²⁸⁴

The CBI DSP and two inspectors were appointed to investigate Jugraj Singh's killing. Jugraj's van remained at the High Court for two months before the CBI team took possession of it and transferred it to the Central Forensic Science Laboratory in Sector 36 in Chandigarh. The DSP asked Mohinder Singh to assist the forensic team, which included paying for services:

First, the forensic team wanted to see the engine number... I brought two mechanics on my scooter from the gas station in Sector 37 to the lab. It took them about an hour to remove the engine. After removing it we could see that the engine number had been welded over with metal. The lab wanted to remove the welded material but all they had were files. So they told me to make arrangements to have the welded-on material removed. I then got another mechanic from Sector 21 who had an electric grinder and brought him to the Forensic Lab. It took him about an hour to grind through the welded material. Then, the forensic team applied several different etching chemicals to remove the remaining material. Unfortunately, none of these efforts revealed the engine number. The police had completely obliterated it.

At this time, we also checked for the chassis number. When we got under the van to take a look, there was 2.5 inch hole where the chassis number used to be.

The forensic team then enlarged the photos from my negatives and compared all the photos with each other and with the van in their possession.²⁸⁵

²⁸⁴ Ensaaf interviews with Mohinder Singh, Ropar, March 13 to April 1, 2007.

²⁸⁵ Ibid.

Based on the earlier photographs, the forensic team noticed many similarities with the van in their possession. The same patterned covers were visible in the photos and in the recovered vehicle. Mohinder Singh described other similarities:

The old picture of the van also showed a fan bolted to the dashboard between the passenger and driver. There was a brown velvet cloth on the dashboard of the recovered vehicle and when the forensic investigators removed it they found three bolt holes exactly where the fan would have been. They also measured the location of the fan on the dashboard in the picture with the bolt holes in the dash of the recovered vehicle and concluded they were at the same spot.

Jugraj's van also had red sticker striping on the sides of its doors which could be seen in the old pictures. There were no stickers on the recovered van but you could see that there was adhesive residue left on the same spot where the stickers would have been. I asked the forensic team to compare the measurements of the stickers on the van in the photos with the dimensions of the adhesive residue on the van. They did this and concluded that the stickers were the same size and had been peeled off.

Also, the driver's side door of Jugraj's van had been damaged in an accident. The handle got bent in and the door got scratched. The repair shop filled in the dent with powder and painted over it. When I mentioned this to the forensic team they scrapped at the area where I indicated the damage should be and powder came loose.²⁸⁶

The director of the forensic lab submitted its report to the CBI concluding that the van recovered from the Beas Police Station belonged to Jugraj. Despite this report, the DSP from the CBI challenged the ownership of the van. Mohinder Singh recounted:

²⁸⁶ Ibid.

The last piece of the puzzle was the vehicle registration number which the DSP insisted on. I had mentioned the registration number in the High Court petition. The DSP took the registration number to the Transport Department and asked them to check it with their records. They did and confirmed that the white Maruti van was registered with Jugraj Singh.²⁸⁷

While this was happening, Mohinder Singh described how the CBI attempted to dissuade him from pursuing this case:

On one occasion when [the officer] from the CBI came to my house, he told me that I wasn't going to get anything out of this. Not justice and not even compensation. He further said that: 'I see you running around pursuing your case. But you shouldn't get into a confrontation with the police. You have to live here and they can pick you up at any time.' He was indirectly threatening me.²⁸⁸

The CBI submitted its report to the High Court on August 16, 1996. The CBI confirmed the van as Jugraj Singh's.²⁸⁹ The CBI, however, concluded that Jugraj's being taken into police custody could not be established. The CBI report did state that one of the two encounter victims was Jugraj and clarified that he was the clean-shaven youth that had been killed.²⁹⁰ This also meant that the police had cut short the hair of Jugraj Singh, a devout Sikh who kept his hair uncut according to Sikh discipline. Based on photographs of the alleged encounter scene, Mohinder Singh disputes the CBI version, maintaining that Sukhdev Singh was the one whose hair and beard were cut.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

²⁸⁹ Report of Investigation in Crim. Misc. Pet. No. 92 of 1995 & Cr. W. P. No. 87 of 1995, Punjab and Haryana High Court, CBI Case No. RC.4(S)/96-SIU.I/SIC.I/New Delhi, S. Prasad, DSP CBI SIC.I, New Delhi, August 16, 1996, paras. 20-23. Copy on file with Ensaaf.

²⁹⁰ Ibid., paras. 16 (establishing cremation of bodies in Amritsar), 20-21, 28 (establishing identity of one of the two unidentified bodies as Jugraj Singh, son of Mohinder Singh). See also Crim. Misc. No. 730 of 1996 in Writ Petition (Crl.) No. 87 of 1995, *Mohinder Singh v. State of Punjab*, Punjab and Haryana High Court, July 17, 1997. Copy on file with Ensaaf.

The CBI report was accepted by the High Court judge on April 29, 1997.²⁹¹ The judge denied Mohinder Singh's request for further investigation by the CBI.

Mohinder Singh filed another application requesting the CBI to record the statement of Kesar Singh, who witnessed the police abduction.²⁹² Mohinder Singh described the significance of Kesar Singh and how the judge failed to order the CBI to examine him as a witness:

Kesar Singh had gone to my attorney for his own reasons. He told the attorney that he witnessed the police abduction of Jugraj but didn't know how to get in touch with Jugraj's family. My attorney gave Kesar Singh my number. He came over and told me everything he had witnessed. He knew Sukhdev Singh Sukhi alias Didar Singh and Jugraj. Kesar Singh was walking from his office in Phase 7 to meet someone in Phase IIIA when he witnessed the police abduct Sukhi and saw Jugraj in the back of his van.

We filed Kesar Singh's affidavit in the High Court along with an application asking the court to order the CBI to examine him as a witness. The CBI strongly opposed the application. They argued that it was too late to introduce a new witness.

The court rejected Mohinder Singh's application:

In the beginning of the investigation the DSP said: "If you give me even one eyewitness to the abduction I'll hang all of them [the police]." And when I produced an eyewitness the CBI refused to examine him.²⁹³

²⁹¹ Crim. Misc. No. 730 of 1996 in Writ Petition (Crl.) No. 87 of 1995, *Mohinder Singh v. State of Punjab*, Order of the Punjab and Haryana High Court, April 29, 1997. Copy on file with Ensaaf.

²⁹² Crim. Misc. No. 608 of 1997 in Writ Petition (Crl.) 87 of 1995, *Mohinder Singh v. State of Punjab*, Punjab and Haryana High Court, July 17, 1997. Copy on file with Ensaaf.

²⁹³ Ensaaf interviews with Mohinder Singh, Ropar, March 13 to April 1, 2007.

Judge Srivastava denied this petition, but stated that Mohinder Singh would receive notice when the CBI filed its final report in the CBI Special Court.²⁹⁴ The High Court disposed of Mohinder Singh's petition on November 21, 1997.²⁹⁵

The CBI filed its final report in the Court of the special judicial magistrate, CBI, in Patiala on February 27, 1998. After Mohinder Singh received notice from the court on March 18, 1998, he filed a petition against the CBI report which recommended closure of the case. Through another petition, Mohinder Singh requested copies of the documents attached in the CBI investigation file, but the petition was dismissed.²⁹⁶ He challenged that dismissal to the High Court.²⁹⁷ The High Court order stated that when the final report was presented in the Special CBI Court, "it is open to the petitioner to file a protest petition before the Special CBI Court and the Special Judge, CBI Court will examine the petitioner and other witnesses produced by him."²⁹⁸

Mohinder Singh recounted:

I produced 10 of my witnesses within one to two months with the exception of DSP Gurpreet Singh Gill and Deputy Inspector General Chadda, who took a year. The DSP denied that I ever came to him and said he did not conduct an inquiry. But then I produced the affidavit he had submitted in the High Court describing his inquiry. Why would he have conducted an inquiry unless I had gone and complained to him?²⁹⁹

²⁹⁴ Crim. Misc. No. 608 of 1997 in Writ Petition (Crl.) 87 of 1995, *Mohinder Singh v. State of Punjab*, Order of the Punjab and Haryana High Court, August 8, 1997. Copy on file with Ensaaf.

²⁹⁵ Writ Petition (Crl.) 87 of 1995, *Mohinder Singh v. State of Punjab*, Order of the Punjab and Haryana High Court, November 11, 1997. Copy on file with Ensaaf.

²⁹⁶ Application for directing CBI i.e. Investigation Agency to submit all the documents relating to investigation, No. RC.4(S)/96/SIU.I/SIC.I.CBI/New Delhi, April 16, 1998. Order of Special Judicial Magistrate, CBI, Patiala, RC.4(S)/96/SIU.I/SIC.I.CBI/New Delhi, July 30, 1998. Copies on file with Ensaaf.

²⁹⁷ Crim. Misc. No. 21986-M-1998, *Mohinder Singh v. Central Bureau of Investigation*, August 26, 1998. Copy on file with Ensaaf.

²⁹⁸ Crim. Misc. No. 21986-M-1998, *Mohinder Singh v. CBI*, Order of the Punjab and Haryana High Court, June 2, 1999. Copy on file with Ensaaf.

²⁹⁹ Ensaaf interviews with Mohinder Singh, Ropar, March 13 to April 1, 2007. See also, Order of Special Judicial Magistrate, CBI, CBI v. Unknown, RC No.4(s)96/10/5/96/SIU.1.SIC.1.CBI.New Delhi, April 9, 2003, para. 11. Copy on file with Ensaaf.

Mohinder Singh finished presenting his evidence in December 2000. In his order of April 9, 2003, the special CBI judge rejected the CBI report and ordered further investigation. The judge further ordered the CBI to complete its report within three months. The order stated:

The perusal of the closure report shows that the Investigating Officer has been toeing the line of the Punjab Police Officials.... The Investigating Officer had tried to justify the alleged encounter by the Punjab Police killing Jugraj Singh and Sukhdev Singh alias Didar Singh.... The perusal of the case diary reveals that Investigating Officer has kept his investigation confined to the recording of the statement of Police Officials involved in the encounter and also the Police Officials working in the Police Station Phase-8 Mohali or he has kept himself busy to establish the criminal record of Jagraj [sic] Singh and Sukhdev Singh alias Dari to prove that the encounter was genuine and both Jagraj [sic] Singh and Sukhdev Singh alias Dari are hardcore terrorist even though...this was not a point to be investigated.³⁰⁰

Meanwhile, another CBI officer had started intimidating witness Kesar Singh. On October 29, 2003, Mohinder Singh submitted a complaint to the director of the CBI regarding the conduct of the new investigating officer.³⁰¹ He sent three reminders, with no reply.³⁰²

Mohinder Singh described the alleged actions of the inspector [name withheld]:

When the case was before the CBI Special Court in Patiala, the [investigating officer] visited Kesar Singh at work and tried to intimidate him into changing his statement. [He] told Kesar Singh that

³⁰⁰ Order of Special Judicial Magistrate, CBI, *CBI v. Unknown*, RC No.4(s)96/10/5/96/SIU.1.SIC.1.CBI.New Delhi, April 9, 2003, para. 11. Copy on file with Ensaaf.

³⁰¹ Letter from Mohinder Singh to Director, CBI, Subject: Complaint of mis-conduct against Inspector Naresh Talwar, CBI-SIC-I, New Delhi, October 29, 2003. Copy on file with Ensaaf.

³⁰² Letter from Mohinder Singh to Director, CBI, November 24, 2003. Copy on file with Ensaaf. Letter from Mohinder Singh to Director, CBI, January 7, 2004. Copy on file with Ensaaf. Letter from Mohinder Singh to Director, CBI, February 12, 2004. Copy on file with Ensaaf.

they would make his life difficult. Kesar Singh remained steadfast and said he wouldn't contradict his High Court affidavit. [The inspector] then handed Kesar Singh a summons to appear in Delhi for a lie detector test. Kesar Singh told [the inspector] that he could summon him wherever he liked but he wasn't going to change his statement. Two days before the test date the inspector called him and told him not to come to Delhi. The police and CBI tried to implicate Kesar Singh in false cases. He couldn't attend work because of the harassment and got suspended. He only got reinstated after he filed an internal departmental appeal.

The next time [the inspector] visited me I told him that I had made a complaint against him. He said: 'We get thousands of such complaints. Do you know what we do with them? We throw them in the trash.'³⁰³

After receiving several continuances, the CBI filed its final report in May 2004. In its closure report, the CBI stated that the professional and personal conduct of Kesar Singh was "tainted," mentioning that he had been terminated from his job until 2000 and was an accused in three criminal cases.³⁰⁴ After receiving a protest petition by Mohinder Singh and a reply by the CBI, the CBI special judicial magistrate requested the CBI to investigate certain issues further.

Eventually, on February 9, 2006, the special judicial magistrate accepted the CBI's final report and dismissed the case, discussing the unreliability of witnesses and the lack of corroboration of the events as stated to have occurred by Mohinder Singh.³⁰⁵

Eleven years after his son was executed, after filing countless petitions, pursuing investigations himself, and presenting numerous witnesses, Mohinder Singh was left with no remedy. Mohinder Singh continues to demand justice:

³⁰³ Ensaaf interviews with Mohinder Singh, Ropar, March 13 to April 1, 2007.

³⁰⁴ Naresh Talwar, inspector, CBI/SIC.I/New Delhi, Final Report under Section 173, Criminal Procedure Code, RC.4(S)/96-SIU.I.SIC.I/New Delhi, May 19, 2004, p. 16. Copy on file with Ensaaf.

³⁰⁵ Order of Special Judicial Magistrate, CBI, Punjab, *CBI vs. Unknown*, RC No. 4(S)/96/SIU.I.SIC-I, New Delhi, February 9, 2006. Copy on file with Ensaaf.

I should receive justice. My son won't come back but the responsible police officers should be punished. But who will punish them? The judiciary? The judiciary arbitrarily closed my case. Where can I go? It's not like I have so much money that I can keep litigating this case. That's why I've given up. After all my running around and legal advocacy, I didn't get anything. The facts were on my side but it didn't matter.

Numerous sources told us that Jugraj was tortured to death. Different policemen approached my legal team in court and told them that Jugraj was tortured to death on the same night he was picked up. There's no law if police can shoot and kill people at will. What kind of law is that? There are no human rights here. It's all on paper. There's no truth. It is the rule of the jungle here.³⁰⁶

E. Attacks on civilians: The killing of Charanjit Kaur

The case of Charanjit Kaur illustrates how high the stakes have been for many families. At least five other family members, including one son no more than 11 years old at the time, also allegedly were tortured by authorities.

In October 1992, officers in the Criminal Investigation Agency (CIA) office in Samana (an office hereafter referred to as "CIA Staff Samana," following local practice) arrested Charanjit Kaur's husband Kulwant Singh, suspected to be a militant, at a shop in Patran and detained him for 17 days at CIA Staff Samana and four days at CIA Staff Patiala. The police released him without charge, and then tried to abduct him again a few days later.³⁰⁷ According to his brother Jaswant Singh, Kulwant Singh then went underground and became a militant.³⁰⁸

³⁰⁶ Ensaaf interviews with Mohinder Singh, Ropar, March 13 to April 1, 2007.

³⁰⁷ Affidavit of Pritam Kaur, mother of Kulwant Singh, to People's Commission on Human Rights Violations, para. 1, August 5, 1998. Copy on file with Ensaaf.

³⁰⁸ Ensaaf interview with Jaswant Singh, brother of Kulwant Singh, Patiala, April 16, 2007.

After Kulwant Singh joined the militants, according to his brother Jaswant Singh, the police established a permanent check-point at their village and regularly harassed their relatives.

They also confiscated five acres of my mom's farmland, and harvested and sold her crop for four to five years. The police beat up the family, ransacked the house, and then threw us out. After being thrown out, Kulwant Singh's family and my mother moved in with me in Samana.³⁰⁹

The police continued to detain and torture members of the family, targeting Kulwant Singh's two brothers, his parents, his wife Charanjit Kaur, and his young son. Recalls his brother:

Our torture typically included binding us in awkward positions for prolonged periods, drowning us in water, electrocution, *ghotna* [heavy roller], *falanga* [beating of soles of feet], and tearing our legs apart. Police detained and brutally tortured me over 10 times, and detained and tortured Charanjit Kaur over fifty times. During one episode, in 1993 or 1994, police detained Charanjit Kaur for six months and tortured her regularly. They also detained and tortured her son Baljit Singh alias Daler Singh, who was only 10 or 11 at the time. The police tried to use Baljit to identify other people. They would take him to public places, like *gurdwaras* [Sikh house of worship], in the hope that people would recognize and approach him, and then apprehend those people. They even detained and tortured my mother and my father numerous times. They practically detained and tortured everybody in my immediate and extended family. As a result of all this detention and torture, our extended family stopped associating with us.³¹⁰

³⁰⁹ Ensaaf interview with Jaswant Singh, Patiala, April 16, 2007. See also, Affidavit by Balkar Singh (father of Kulwant Singh) to Sub-Divisional Officer, Punjab State Electricity Board, Patran, March 31, 1997, para. 3 (regarding reconnecting his motor, which was disconnected while the police occupied their land starting March 1993. The SSP Sangrur had just ordered return of the land). Copy on file with Ensaaf.

³¹⁰ Ensaaf interview with Jaswant Singh, Patiala, April 16, 2007.

On November 20, 1995, police in Samana once again tortured several of Kulwant Singh's relatives, and threatened them with extrajudicial execution:

[Names of two officers withheld] brutally tortured me and my brother and also brutally tortured Charanjit Kaur, including severe beatings, electric shocks, and other indescribable acts. [One of the officers] threatened my mother Pritam Kaur and Charanjit Kaur that if we did not produce my brother Kulwant Singh, they would kill someone from our family.³¹¹

On November 29, 1995, they executed that threat when around midnight, [name of officer withheld] and other police officers came in a Maruti van and entered the family's house by scaling the walls. According to Jaswant Singh, they had their faces covered and were carrying assault rifles. In an affidavit, Pritam Kaur recounted the events of Charanjit Kaur's killing:

The police dragged Charanjit Kaur outside and threw her in the van. I begged them to release her, but they did not listen...That same night, I went to CIA Staff Samana, and they told me to go to City Samana Police Station. When I went there, they told me to go to Sadar Police Station. When I went to Sadar Police Station, the police told me to go to sleep and they would find out in the morning.³¹²

Jaswant Singh told Ensaaf:

At 7:30 in the morning, two policemen came to the neighbor's house and told him to come along with them to identify a body lying at a tubewell [water well] in the fields of the neighboring village. Once they reached the tubewell, our neighbor identified Charanjit Kaur's body....

³¹¹ Ibid.

³¹² Affidavit of Pritam Kaur, para. 5.

The post mortem was conducted at Civil Hospital Samana, and Inspector [name withheld] who was present at the time, took into possession the bullets that were recovered from Charanjit Kaur's body.

Later, we learned about the final moments of Charanjit Kaur's murder. A farm worker was sleeping at the tubewell when the police murdered her. The person sleeping at the tubewell overheard the police say to Charanjit Kaur that 'if we let you go, you won't tell anybody, will you?' Charanjit said, 'No, I swear, I have a child and I wouldn't do anything to jeopardize his life. I swear, if you let me go, I won't tell anybody.' The police said okay but then she only took two steps, looking over her shoulder at each step, before they shot her with a burst of bullets, and blew off half of her face.³¹³

After repeated requests by Pritam Kaur, Kulwant Singh's mother, the police registered a First Information Report (FIR) as FIR No. 247, dated November 30, 1995. However, she stated in an affidavit that the police did not transcribe her version of events as she recounted it. Instead, the police omitted all mention of the role of police officers and described Charanjit Kaur's murder as an act perpetrated by unidentified individuals. They also omitted mention of Pritam Kaur's visits to police stations after Charanjit Kaur was abducted.³¹⁴ According to Pritam Kaur, [three officers, names withheld] at gunpoint forced Pritam Kaur and her granddaughter, who had accompanied her, to place their thumbprints on the FIR.³¹⁵

In February 1997, the police returned Pritam Kaur's land. The family submitted a case to the People's Commission on Human Rights Violations, a private panel of three retired judges established by the Committee for Coordination on Disappearances in Punjab, but did not pursue further advocacy. Jaswant Singh told Ensaaf:

³¹³ Ensaaf interview with Jaswant Singh, Patiala, April 16, 2007.

³¹⁴ First Information Report No. 247 of 1995, Police Station Samana, District Patiala, November 30, 1995. Copy on file with Ensaaf.

³¹⁵ Affidavit of Pritam Kaur, para. 6.

We did not pursue any advocacy at the time because we were afraid and could not afford an attorney and nobody was willing to stand with us. But we still want justice. The perpetrators should be punished. Charanjit was blameless; they shouldn't have killed her.... [W]hat was the fault of [Kulwant Singh's] wife, son, and the rest of the family? Her son should also receive employment so he can make something of his life. And we should receive compensation for the destruction of our property and the loss of our income due to the confiscation of our farming land for all those years.³¹⁶

On August 21, 1999, the family heard on television that the police had killed Kulwant Singh in an encounter in Uttar Pradesh. The family does not believe he died in a genuine encounter, because the previous day's news had reported the arrest of his associates and that Kulwant Singh had escaped.³¹⁷

F. Harrassment of relatives: The case of Mohinderpal Singh alias Pali

The extrajudicial execution of Mohinderpal Singh provides further evidence of police fabrication of records, in this case post mortem reports, as well as abuses against other family members.

Mohinderpal Singh was active in leadership roles with the All India Sikh Students Federation (AISSF). In 1986, he served as the district vice-president of the AISSF, and was appointed president after the police killed the serving president. According to an unpublished biography written by his father Ajit Singh:

He had been president for about four months when, on September 26, 1986, comrade Darshan Singh Canadian was assassinated in Mahilpur. This opened the floodgates of government persecution of Mohinderpal Singh Pali because he was already under the government's notice. His

³¹⁶ Ensaaf interview with Jaswant Singh, Patiala, April 16, 2007.

³¹⁷ Ibid.

house was raided on September 27, but he had already left for Gardiwal college for a membership drive of the federation.³¹⁸

Mohinderpal Singh went into hiding. The police then took his father Ajit Singh into detention instead, as well as several close relatives. Ajit Singh was detained for over one month until October 31, 1986. Meanwhile, the police charged Mohinderpal Singh with the assassination of Darshan Singh Canadian.

The police continued to detain and torture members of Mohinderpal Singh's family until he was killed in November 1987. Ajit Singh told Ensaaf that he was detained from 15 to 20 times from 1984 to 1987. Two days before the death of Mohinderpal Singh, the senior superintendent of police (SSP) detained Ajit Singh. Ajit Singh told Ensaaf:

The SSP said, 'We're only going to leave you alone once you turn him in. We'll pick up his mother and everybody else until we get him.'³¹⁹

³¹⁸ Ajit Singh Gill, Biography of Martyr Mohinderpal Singh Pali (unpublished). Copy on file with Ensaaf.

³¹⁹ Ensaaf interview with Ajit Singh, Hoshiarpur, April 11, 2007.



Ajit Singh, himself a victim of torture, holds a picture of his son who was tortured and extrajudicially executed by the police.

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On November 3, 1987 Ajit Singh found that the police had killed his son:

On November 3, 1987 at 6:30 a.m., two Punjab police head constables came to my house on a private scooter and told me that their 'Sahib' (station house officer) wanted to see me. The policemen sat me on their scooter and took me to Mahilpur Police Station. At that time, only the clerk [name withheld] was present at the station and he directed me to wait in a room. About 20 minutes later, around 8:00 a.m., I was called out of the room. I saw that a large police force had assembled in the station's courtyard. [Names of three officers, withheld], and a deputy inspector general (DIG) were among the policemen. These officers told me that they had killed two youths in an encounter at

village Barian Kalan, and they asked me to see if my son was among them.³²⁰

Ajit Singh identified his son's body; the identification was confirmed by the head of his village council. Ajit Singh accompanied the police to the hospital. He described his son's body and apparent marks of torture, and recounted his conversation with the doctor who conducted the post mortem:

Around 1:30 p.m., the SHO ordered the sub inspector to take Pali's body for post mortem at Garshankar Civil Hospital. They transferred Pali's body to another truck and I sat in the back of the truck with the body and a constable, and SI [name withheld] and the driver sat in the front.

Before the post mortem, I bought a cloth from the market and covered the bodies. During the post mortem, I removed the clothes from my son's body. There were marks of torture on his body. There were six to seven scars on his chest from electric shocks, and more on his genitals, neck, and hands. I also saw the bullet wounds; one in his head and several in his chest. His back was blown out from the bullet exit wounds.

At that time, [name of doctor withheld] was the senior medical officer at the civil hospital and personally knew me. I was also a government employee. The doctor told me that the gunshots had been fired at Mohinderpal from a very close range (four meters), but that he couldn't write that in the post mortem report. He said that he would have to write that Pali was shot from 12 meters, and that if he didn't, the police would tear up the post mortem report and get it done and signed by another doctor. He clearly told me that in encounter cases, the government doctors always wrote the post mortem reports so as not to incriminate the police. He said that in every police encounter, the

³²⁰ Ibid.

gunshots were invariably fired from close range. However, in compliance with the ‘instructions,’ he always wrote that the shots were fired from a long distance. And that is what he would do in this case. As the doctor was telling me this, it was evident from his facial expressions that he was either scared of the police or he was carrying out secret government orders.³²¹

Ajit Singh’s family cremated Mohinderpal Singh’s body at the village that evening. One of his alleged killers reportedly attended the funeral.³²² The police had accused Mohinderpal Singh and another individual of killing innocent villagers in the area where the police killed them.³²³ Ajit Singh later went to the village and spoke to villagers:

At the village, I saw a grove of trees. That place is also known as ‘Babe da Bagh.’ There were many tubewells near there. The owners of those tubewells told me that on the night of the alleged encounter, they were irrigating their fields when they heard the sound of police vehicles and gunshots. Before the gunshots, they heard the voice of a youth who said: ‘Do not kill me blindfolded and bound. Do not shoot me in the back.’ According to the people around there, this youth was arguing with the police in a loud voice and then they heard the sound of gunshots for quite some time. They heard the shots at 3:45 a.m. According to the villagers, after sunrise, the police brought the villagers to the site and showed them the bodies. Later, the police also took the bodies to the village and showed them to the people.³²⁴

After his son’s death, Ajit Singh became an active worker of the Akali Dal (Mann) party, and also served as president of a committee of families of the “disappeared”

³²¹ Ibid.; see also Affidavit by Ajit Singh, submitted to Supreme Court Justice Kuldip Singh (August 6, 1998), para. 6. Copy on file with Ensaaf.

³²² Ensaaf interview with Ajit Singh, Hoshiarpur, April 11, 2007.

³²³ “Seven suspicious individuals among ten killed—Attack on police post,” *Ajit* (Jalandhar), November 4, 1987, p. 1. Copy on file with Ensaaf.

³²⁴ Ensaaf interview with Ajit Singh, Hoshiarpur, April 11, 2007.

and killed from Hoshiarpur district. For five years after Mohinderpal Singh's killing, the police continued to raid his house and harass the family.

G. The “disappearance” of Ajmer Singh

Ajmer Singh was a 51-year-old primary school government teacher in village Lasohi. He had three children. According to his wife, Bhagwant Kaur, the family had no connections with militants. In February 1993, the Khanna police detained and tortured Ajmer Singh. Recalls his wife:

He told us about the torture he endured. The police took off his clothes, hung him from his arms tied behind his back, and beat him. They also applied the *ghotna* and stretched his legs apart. They tortured him every day. He also said that he spoke with another boy detained in the cell opposite his. They were able to see each other and talk to each other through the cracks in the cell doors. The boy said that he had been picked up from Amritsar, and his family had no idea where he was, and that if my husband got out, to please tell his family, because he was afraid that the police would kill him.³²⁵

After paying a bribe and exerting political pressure through a member of legislative assembly (MLA), the family was able to secure Ajmer Singh's release after a week. The police never recorded his arrest.

³²⁵ Ensaaf interview with Bhagwant Kaur, Ludhiana, April 6, 2007.



Bhagwant Kaur sits with her daughter, and holds a picture of her “disappeared” husband Ajmer Singh.
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On March 4, 1994, Ajmer Singh left school for home at 3 p.m. When he did not return at 3:30 p.m., his wife, Bhagwant Kaur, contacted another teacher at the school who said that Ajmer Singh had been seen going towards his village. His relatives and other villagers fanned out in different directions to look for him. Bhagwant Kaur says that the police took her husband away.

Farm workers along the roadside told my father-in-law that they saw my husband coming on his scooter, but when my husband saw the police parked on the road, he turned around. The police jeep came after him and forced him off the road. Then, the police forcibly abducted him; they put him in the jeep and put his scooter in the tempo [three-wheeled van] and drove off. He was abducted around 3:15 p.m. My father-in-law then went home and told the rest of the family what he had learned. In the meantime, an acquaintance of my

husband came to our house and also said that police had abducted my husband.³²⁶

The family contacted the MLA who agreed to help them locate Ajmer Singh. Bhagwant Kaur told Ensaaf how she saw Ajmer Singh in police custody:

We went to various police stations to locate my husband, but everybody denied having custody of him. Then, about two to three days later, around March 6, we saw him at CIA Staff Malerkotla. We asked some police officers to release him. They said: ‘Don’t worry. We’ll release him.’ We asked a police employee who those officers were, and he replied that they were [names of officers withheld]

We went to Malerkotla CIA Staff again the next day. We met the same officers, and they said again the second day that they would release him. By chance, on the way out, we saw Ajmer Singh in a room, but we were too afraid to speak out and say anything. He wasn’t wearing a turban and it looked as if he had been tortured.³²⁷

On both days, Bhagwant Kaur saw her husband’s scooter at the police station.³²⁸ The next day, when Bhagwant Kaur and her father-in-law returned to CIA Staff Malerkotla, the same police officers denied custody of her husband. His scooter was also not there.³²⁹ Her father-in-law continued to pursue leads, but they never saw Ajmer Singh again.

In April 1994, Bhagwant Kaur attended a meeting organized by Jaswant Singh Khalra and the Human Rights Wing of the Akali Dal, where she learned about his investigations into mass cremations and advocacy on behalf of families of the “disappeared” and killed. Bhagwant Kaur’s father-in-law Jagir Singh filed a

³²⁶ Ibid.

³²⁷ Ibid.

³²⁸ “The residents of Sihora still are startled when they see police,” *Ajit* (Jalandhar), May 26, 1997. Copy on file with Ensaaf.

³²⁹ Ibid.

complaint with the National Human Rights Commission. The Commission reviewed his complaint on October 24, 1994, and wrote to Jagir Singh on November 2, recording the Commission's direction:

The petitioner alleged that on 4.3.1994 [March 4, 1994] his son Ajmer Singh had been taken away by the police and has since then not been found out. A notice was issued to the State Government on the complaint. It has been stated that no person by the name of Ajmer Singh had ever been arrested by the police and, therefore, the question of not accounting for the custody of the person does not arise. The SSP, Ropar, has also denied taking into possession of any Scooter and release thereof later on by the Police. In such circumstances, no further action is called for.³³⁰

Based merely on the police denial, the NHRC dismissed Jagir Singh's complaint. It did not pursue any further investigation. In 1996, Ajmer Singh's family filed a habeas corpus petition:

In 1996, we filed a Habeas Corpus Petition, Cr.W.P. No. 963/1996, in the Punjab and Haryana High Court Chandigarh through Advocate Ranjan Lakhanpal. The High Court ordered the sessions court to conduct an inquiry within three months. The sessions judge in Sangrur, Manmohan Singh Bedi, completed his inquiry within three months, and submitted a report favorable to our case to the High Court. The High Court then ordered the Malerkotla Police to register FIRs against the implicated officers.

During the inquiry process, the police would come to my home and try to persuade me to withdraw the case. I believe they even got me transferred from my job to make it difficult for me to attend the hearings.

³³⁰ Letter from NHRC, Law Division, Registrar to Jagir Singh, son of Gurdir Singh, village Sihora, District Ludhiana, No. 19/250/94-LD/NHRC, November 2, 1994. Copy on file with Ensaaf.

We went to the police station and got the FIRs registered. A deputy superintendent of police (DSP) from Malerkotla conducted the investigation, which took three to four months. They would summon me to go to the police station to give my statement. I went about four times. In his final report, the DSP exonerated the police. The DSP had obtained statements from about 18 people from Lasohi village saying that no abduction had taken place. It's no surprise that he exonerated his colleagues.³³¹

Bhagwant Kaur performed her husband's last rites in December 2006. After receiving no proof of what had happened to her husband, she resolved in her mind that he must be dead. She told Ensaaf how she lost the ability to pursue her husband's case:

I don't have the capacity to pursue the case anymore. My father-in-law is now deceased and I can't do it without him, and I don't believe that the witness will cooperate. Now, God will do the final accounting....

My husband was such a hard worker, doing both the school work and farming. He was *Amrithdhari*. He would help every person and every creature, even giving food and water to stray dogs. The perpetrators should have been punished and I should have been given justice.³³²

H. Dispiriting delays: The killing of Kulwinder Singh alias Kid

It has been 18 years since Tarlochan Singh first began pursuing a case against the police officers who allegedly killed his son, Kulwinder Singh alias Kid. During this time, key witnesses have died, others have been intimidated by police, and evidence has been destroyed. Further, senior officers have not been charged with their role in the killing, despite apparent superior responsibility for the crime.

³³¹ Ensaaf interview with Bhagwant Kaur, Ludhiana, April 6, 2007.

³³² Ibid.

Kulwinder Singh was 20 years old at the time of his killing, and an active participant in the activities of the All India Sikh Students Federation (AISSF). The police first began to detain and torture Kulwinder in 1985, even detaining family members when they could not apprehend him. The police also filed two cases against him. Kulwinder Singh went into hiding to avoid the repeated police raids. In April 1987, the police implicated Kulwinder Singh in another estimated 25 cases after detaining and torturing him. By September 1987, Kulwinder Singh had been acquitted in these cases.

Kulwinder Singh disappeared on July 22, 1989, in Mohali. Tarlochan Singh, his father, told Ensaaf:

On that day, I received an anonymous call at the school where I worked as principal. The caller informed me that House Number 1752, Phase-V, had been cordoned off by police in civil clothes since 9:30 a.m. I received this call because I was serving as an active member on the Committee Against Police Excesses. The committee, which reported abuses to Ajit Singh Bains, chairman of the Punjab Human Rights Organisation, Chandigarh, was formed to highlight and protest against police abuses in Kharar. My active involvement in this committee had brought me into direct confrontation with the police several times. The committee used to meet daily at 2 p.m.... I informed the other members about the anonymous caller and we decided to proceed to Mohali in a jeep....

As we entered the street where the house was located, from a distance of about 30 yards, we saw Kulwinder Singh and another youth enter the specified house. We also saw three vehicles parked in the street, one of them a gypsy. We saw Kulwinder Singh open the wire-net door of the house, while the other youth stood in the courtyard of the house. Immediately, seven to eight men in civilian clothes came out of the garage and pounced on Kulwinder Singh. They overpowered him and threw him to the ground, covering him with a blanket. The other youth tried to escape by jumping over the wall of the house, but persons stationed on the rooftop shot and killed him. My colleagues and I

heard three gunshots fired. Kulwinder Singh was taken to the garage where the landlady had been detained since morning. Kulwinder Singh was then bundled into the gypsy and all of the cars sped away, while three to four policemen in civilian clothes stayed behind with the dead body.³³³

Tarlochan Singh did not see Kulwinder Singh again.

Tarlochan Singh visited the Phase-I Police station with his colleagues, but they were not allowed to enter. After waiting two to three hours, they went to send telegrams to the chief justice of the Punjab and Haryana High Court, governor of Punjab, the SSP of Ropar, and the director general of police of Punjab. They next went to the office of the daily *Punjabi Tribune*, where a reporter informed them that the police had issued a press release stating that Palwinder Singh Pola had been killed in an encounter and Kulwinder Singh had escaped. He gave the reporter his version of events, and the *Punjabi Tribune* and *Ajit* published that as well.

Two days later, on July 24, human rights attorney Kulwant Singh and his wife visited Tarlochan Singh. Kulwant Singh had represented Kulwinder Singh in the cases against him, and told Tarlochan Singh that he had identified Kulwinder Singh's dead body at the morgue at Ropar Civil Hospital. The doctor who conducted the post mortem also stated that one of the bodies of two unidentified youth killed the night of July 23, 1989, resembled Kulwinder Singh. The families did not receive the bodies. Justice Ajit S. Bains, Inderjeet Singh Jaijee, and Baljit Kaur tried to reclaim Kulwinder Singh's body after receiving permission from the district commissioner, but when they reached the hospital, the bodies were gone. The police have continued to maintain that Kulwinder Singh escaped.

On September 22, 1989, Tarlochan Singh filed criminal writ petition No. 3342/89 before the Punjab and Haryana High Court. That began a process of multiple inquiries:

³³³ Ensaaf interview with Tarlochan Singh, Ropar, April 2, 2007.

During court, the police admitted that ASI Amarjit Singh raided House No. 1752, Phase V Mohali, on July 22, 1989, and stated that Palwinder Singh Pola had been killed and Kulwinder Singh had escaped...The writ petition was initially heard by Justice SS Grewal and he directed the chief judicial magistrate (CJM) at Ropar to hold an enquiry.

On June 18, 1990, Justice R.S. Mongia of the High Court directed the CJM Ropar to submit an inquiry report in three months on the issue of whether Kid was abducted by police. Inspector Surjit Singh and ASI Amarjit Singh petitioned the High Court to transfer the case to Chandigarh, alleging that no advocate was willing to take up their case because of militant threats.

I learned of the stay request from the CJM Ropar at the second hearing. The CJM told me that I'd have to go to the High Court to challenge the stay petition. He further told me that the police were pressuring him to do things in their favor. He refused to give into their pressure, however, and told the police that he would do justice.

My lawyers were not present to argue against the stay petition, but I told the High Court judge that I could speak for myself. I told the judge about my conversation with the Ropar CJM: the police were seeking a transfer because the CJM Ropar refused to succumb to their pressure. Hari Singh Mann was the counsel for the police. I said I had no objection to the case being transferred to Chandigarh. However, the case should not be transferred to a CJM requested by the police, but some other judge. The High Court agreed with me, and said that the inquiry would be conducted by Tara Singh Cheema, a sessions judge in Chandigarh.³³⁴

The sessions judge began the inquiry but was transferred. The second judge was promoted to the High Court. The third judge gave continuances every two to three

³³⁴ Ibid.

months, failing to develop the inquiry any further. A year later, he was also promoted to the High Court. The fourth judge M.S. Lobhana completed the inquiry. Tarlochan Singh recounted:

The inquiry report was dated April 29, 1995, and the sessions judge accepted my version of events. He said that my version was fully corroborated by the landlady Dr. Amarjit Kaur, whose presence at the house was not disputed by the police....

The High Court accepted the inquiry report of Justice Lobhana in total and ordered the CBI to conduct an inquiry and then, if appropriate, register cases. The CBI took about three years to complete its inquiry, starting in 1996. The CBI, after completing its investigation, registered cases against 37 officials. Seven were in the first column—the main accused...

After analyzing fingerprints taken from Kid's previous detentions and prints from the post mortem report, the CBI report concluded that police had killed Kid.³³⁵

After receiving the sessions judge's report, Tarlochan Singh had filed criminal petition No. 329/1995 asking for murder cases to be registered against Inspector Surjit Singh Grewal and ASI Amarjit Singh, with a CBI investigation, as well as compensation of 500,000 Indian rupees to the immediate family. The High Court justice directed the CBI to file the necessary charge sheet after investigation and ordered 300,000 Indian rupees as compensation.

Seven years after he had filed the writ petition, charges had not yet been filed. Tarlochan Singh described the police abuse he suffered during those years:

While the case was proceeding, I used to receive threatening phone calls. The caller would say that they had killed thousands of boys and

³³⁵ Ibid.

thrown them into canals, and they would also do that to Kulwinder Singh's wife, Kid, or me and my wife. I would tell the callers that they knew where I lived and they could come and get me.³³⁶

The High Court asked the central government for approval to bring a case against state officials. After some delay, the sanction was ultimately granted. The police challenged the sanction, but the High Court dismissed their petition. Tarlochan Singh described the trial, and how the police officers remain free:

The officers were never arrested or suspended. They filed bail applications, and the sessions judge initially denied their applications. They appealed to the High Court and the High Court directed the police to go back to the Sessions Court within 15 days. This time, for reasons known only to the sessions judge, he granted bail.

The trial has been proceeding since 2002, with very little evidence being recorded at each hearing, and with two to three months between hearings. During this time, key witnesses have died. All were members of the committee which conducted inquiries into the police excesses and witnessed the abduction.

In this time, the police have also tried to bribe Dr. Amarjit Kaur, but she still won't say that Kid escaped from her residence. Surjit Singh Grewal has been promoted to superintendent of police. Earlier, he was an inspector at CIA Staff Patiala. Many of the other guilty policemen have retired. They should receive life imprisonment. When they come to court, they touch my knees and ask me to withdraw my case. This is a mockery of justice. Justice has been murdered by Justice.³³⁷

Eighteen years after Kulwinder Singh's murder, the case continues with little headway.

³³⁶ Ibid.

³³⁷ Ibid. The last hearings were on September 28 and 29, 2007 in the CBI special court in Chandigarh.

VI. Remedial Framework to Combat Impunity

Impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations.

-Principle 1, Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (2005)

Combating impunity

This chapter proposes detailed recommendations to the Indian government to ensure an effective remedy for all persons whose rights or freedoms were violated in Punjab during the counterinsurgency operations starting in the early 1980s. These recommendations aim to provide redress for the gross violations of human rights that occurred and address the institutionalized impunity that has prevented accountability. The Supreme Court also has the power to implement these recommendations as the Punjab mass cremations case and other cases reach the court.

The cases discussed above highlight several issues that must be addressed in any remedial framework in order for India to fulfill its international legal obligations. The obstacles to combating impunity include, among other issues:

- a) The reluctance of the CBI to properly investigate and prosecute cases of abuse, particularly those implicating senior officers in the police;
- b) The failure of judicial and state institutions, cited by India as pillars of its democracy, to provide justice and their tendency to ignore crimes committed systematically with government complicity;
- c) The use of compensation to avoid genuine accountability;
- d) The destruction and fabrication of evidence by the police; and

- e) The intimidation and abuse of witnesses and victims' families by the authorities.

In addition, as discussed in the legal standards chapter above, flaws in existing laws and regulations—specifically the requirement for prosecution sanction (governmental approval to bring a case against state officials) and the failure to incorporate gross human rights abuses and widespread and systematic crimes into the penal code—are also obstacles to prosecution and should be repealed or reformed.

The framework proposed in this chapter addresses the rights to knowledge, justice, and reparations of the victims' families. In order to provide an effective remedy and combat impunity for these gross violations of human rights, we recommend a commission of inquiry, a special prosecutor's office with fast track courts, and a comprehensive reparations program.

Right to knowledge: Commission of inquiry

India has a rich history of people's commissions and governmental commissions of inquiry.³³⁸ However, in the Punjab and Sikh context, both of these mechanisms have failed to properly and thoroughly investigate and acknowledge state abuses. The People's Commission on Human Rights Violations in Punjab, a civil society initiative of the Committee for Coordination on Disappearances in Punjab, was banned by the Punjab and Haryana High Court after one sitting.³³⁹ Government-appointed commissions of inquiry on the 1984 massacres of Sikhs glossed over the massacres and failed to uncover the system through which the abuses were perpetrated, or assign full responsibility to the planners and organizers.³⁴⁰ Thus, it is necessary that protections are built-in to ensure that any future commission operates independently and with credibility. The internationally-endorsed Impunity Principles, adopted by the UN Commission on Human Rights (now the Human Rights Council), provide

³³⁸ See, e.g., Affidavit of Ram Narayan Kumar, September 28, 1998, Civil Writ Petition No. 14133 of 1998, *Sudershan Goel v. The Union of India and Others*, Punjab and Haryana High Court, para. 5, (Objections to the maintainability of the petition).

³³⁹ Civil Writ Petition No. 14133 of 1998. *Sudershan Goel V. The Union of India and Others*. Punjab and Haryana High Court. December 20, 1999.

³⁴⁰ See Jaskaran Kaur, *Twenty Years of Impunity: The November 1984 Pogroms of Sikhs in India* (Portland: Ensaaf, 2006), 2nd ed.

guidance on international law and best practices on commissions of inquiry, specifically truth commissions.³⁴¹

In order to redress the right to knowledge, the government of India should establish a commission of inquiry to investigate the gross human rights violations that occurred in Punjab from at least 1984 to 1995 during the counterinsurgency operations. The commission should:

- Investigate, clarify, and formally acknowledge incidents of torture, “disappearances,” and extrajudicial executions, among other abuses perpetrated by Indian security forces during the Punjab counterinsurgency, in order to build a full and accurate record of abuses;
- Outline institutional responsibility and identify individuals at senior levels involved in planning, ordering, being complicit in, and perpetrating the abuses;
- Make appropriate recommendations about the content, criteria, and procedures for issuing reparations, and identify steps to prevent the recurrence of violations;
- Possess the powers to subpoena documents and individuals and have full access to government archives;
- Be composed of independent, impartial, and competent individuals;
- Hold public hearings on abuses by all parties during the counterinsurgency period and have the power to make public statements during and after its inquiry, including on the government’s response to the commission’s recommendations;
- Provide witness protection as necessary and conduct outreach to witnesses and family members of victims;
- Ensure the inquiry is conducted in a timely manner, such as by establishing its operations within six months, conducting its investigations in one year, and completing its report within six months following the conclusion of investigations;

³⁴¹ Impunity Principles, principles 6-13. The Impunity Principles define truth commissions as “official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law, usually committed over a number of years.”

- Publish its final report and disseminate it widely; and
- Refer cases to the Special Prosecutor's Office (SPO) for criminal investigation.

A society's right to know the truth about past events requires an investigation capable of identifying perpetrators and enabling sanctions against them, as well as an acknowledgment by the state of the abuses suffered, a public accounting of institutional participation, and access to archives regarding the abuses. The state must conduct investigations into human rights violations "effectively, promptly, thoroughly and impartially."³⁴² The investigations should particularly aim to secure "recognition of such parts of the truth as were formerly denied,"³⁴³ such as the identity and fate of the disappeared, the systematic nature of the abuses, the extent of violations, and the role of senior officials in perpetrating the abuses. To address the abuses committed in Punjab, the commission should focus on the rights violations experienced by individual victims and discard the restrictions and classificatory scheme applied by the NHRC in the Punjab mass cremations case.

The commission's terms of reference should be confirmed after public consultations, especially after incorporating the viewpoints of the victims and family members.³⁴⁴ The Committee for Information and Initiative on Punjab, for example, has argued in the Punjab mass cremations litigation that the government must investigate the entire context of abuses relating to the "disappearances" and extrajudicial executions, such as the torture and trauma suffered by family members of the disappeared and prior experiences of abuse by the decedent.³⁴⁵ In the medical study conducted by Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, 48 percent of the respondents stated that the victim of the

³⁴² Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ("Reparations Principles"), adopted December 16, 2005, G.A. res. 60/147, U.N. Doc. A/RES/60/147 (2005), principle 3(b).

³⁴³ Impunity Principles, principle 6.

³⁴⁴ Impunity Principles, principle 6.

³⁴⁵ Application by the Petitioner, October 24, 2005, Writ Petition (Criminal) No. 447 of 1995, *Committee for Information and Initiative on Punjab v. State of Punjab and Others*. Copy on file with Ensaaf.

extrajudicial execution had experienced prior episodes of custodial torture.³⁴⁶ Further, in 74 percent of the cases, police arrested family members of the decedent; in 56 percent of the cases, police tortured family members.³⁴⁷ These abuses all comprise gross violations of human rights that trigger international legal obligations.

The selection of the individuals who will serve as commissioners is crucial to the commission's perception as a transparent and credible body, and its success in bringing to public attention the full extent of the human rights violations committed. The commission should include experts in international human rights law, who are independent and not associated with the institutions implicated in abuses during the counterinsurgency operations, with a fair representation of gender and religious diversity. The selection process should be public and inclusive, and solicit the active participation of victims and their family members; selection should not be left to a private panel of decision-makers.³⁴⁸

Public proceedings of the commission will increase public confidence³⁴⁹ and insure transparency. However, witnesses and victims must have the option to request partial or wholly confidential hearings in their individual case, in order to protect themselves from retaliation. If possible, provision should be made for limited access to such closed sessions in order to monitor compliance with human rights standards.³⁵⁰

The commission should rely on testimony from witnesses and family members of victims, government and police records, and its own investigations to reach its conclusions. Refusal of the police or other state agencies to participate should not

³⁴⁶ Physicians for Human Rights and Bellevue/NYU Program for Survivors of Torture, "Evaluation of Litigants Pertaining to Writ Petition (CrL) No. 447/95 *Committee for Information and Initiative on Punjab v. State of Punjab*," October 18, 2005, <http://www.ensaaf.org/pdf/reports/PHR-Bellevue.pdf> (accessed April 13, 2007), p. 5.

³⁴⁷ *Ibid.*, pp. 6-7.

³⁴⁸ "Indonesia: Constitutional Court Strikes Down Flawed Truth Commission Law : Recommendations," International Center for Transitional Justice (ICTJ) press release, December 12, 2006, (received by email to Jaskaran Kaur on December 8, 2006).

³⁴⁹ *Ibid.*

³⁵⁰ ICTJ, "Comments on Draft Internal Rules for the Extraordinary Chambers in the Courts of Cambodia," November 2006, <http://www.ictj.org/images/content/6/o/601.pdf> (accessed May 19, 2007), p. 10.

prevent the commission from conducting its investigations.³⁵¹ The commission must conduct these investigations using its own staff, rather than relying on the police. As discussed in this report, the history of the Punjab mass cremations litigation and the experiences of families pursuing legal cases have amply demonstrated that government agencies suffer from a conflict of interest that has led to their omitting key perpetrators and faking evidence in investigations, and also participating in intimidation of witnesses and complainants, among other questionable and illegal practices. In order to facilitate the collection of testimony and public education about its work, the commission should establish offices throughout Punjab to allow for “‘walk-in’ availability.”³⁵² The commission can further pursue partnerships with universities and human rights organizations abroad, to facilitate the collection of testimonies from refugees, including participation through video-conferencing.³⁵³

The government must ensure the preservation of and access to archives that would provide information on the human rights violations.³⁵⁴ Access to confidential records has provided crucial information to accountability efforts in other countries and indicated the government’s commitment to transparency.³⁵⁵ The Impunity Principles call for the application of technical measures and penalties to “prevent any removal, destruction, concealment or falsification of archives.”³⁵⁶ The government must provide access to police records, such as First Information Reports, character rolls

³⁵¹ Argentina’s National Commission on Disappeared Persons (La Comision Nacional Sobre la Desaparicion de Personas, CONADEP) collected extensive evidence of human rights violations through witness and victim testimonies. Rebecca Lichtenfeld, ICTJ, “Accountability in Argentina: 20 Years Later, Transitional Justice Maintains Momentum,” August 2005, <http://www.ictj.org/images/content/5/2/525.pdf> (accessed May 19, 2007), p. 2.

³⁵² The Redress Trust, “Zimbabwe: From Impunity to Accountability,” March 2004, <http://www.redress.org/publications/Beyond%20impunityA5.pdf> (accessed May 19, 2007), p. 18, fn. 30 (discussing International Criminal Court’s victims-rights network).

³⁵³ For example, Northwestern University is helping collect testimonies from the Liberian Diaspora community in the US for the Liberian Truth and Reconciliation Commission. “Transitional Justice in the News,” ICTJ, newsletter, March 15, 2007, <http://www.ictj.org/en/news/newsletter/1180.html> (accessed May 19, 2007).

³⁵⁴ Impunity Principles, principle 5.

³⁵⁵ For example, in Mexico, the Presidential Accord ordered the release of secret documents that have considerably helped with investigations. See, e.g., Paul Seils, ICTJ, “A Promise Unfulfilled? The Special Prosecutor’s Office in Mexico,” Occasional Paper Series, June 2004, <http://www.ictj.org/images/content/1/1/111.pdf> (accessed May 19, 2007), p. i.

³⁵⁶ Impunity Principles, principle 14.

that record disciplinary actions taken against individual officers,³⁵⁷ records of prosecutions and convictions, as well as newspaper reports and press releases on killings and police actions, among other documents. Reasonable restrictions should be imposed to safeguard the privacy and security of victims and other individuals.

The commission should use the balance of probabilities standard in making findings on specific cases. In their brief submitted to the NHRC on December 10, 2003, Human Rights Watch and Harvard Law Student Advocates for Human Rights discussed the unfair evidentiary burdens families face in proving “disappearances” and extrajudicial executions, because the state often exclusively controls the evidence necessary to prove the violations, which it rarely turns over. Because of these difficulties, international human rights bodies have relaxed evidentiary standards and held circumstantial and testimonial evidence, including hearsay, to be admissible before such bodies. Such evidence can shift the burden of proof to the state to refute the allegations of violations, failing which it is presumptively liable.³⁵⁸

The commission should identify and name, in its final report, the individuals responsible for planning and executing the gross human rights violations that occurred during the counterinsurgency operations starting in 1984. As a leading commentator on truth commissions has argued: “[T]elling the full truth requires naming persons responsible for human rights crimes when there is clear evidence of their culpability. Naming names is part of the truth-telling process.”³⁵⁹

The commission should clarify the different kinds of responsibility involved, such as ordering or executing abuses versus implementing policies that facilitated abuses.³⁶⁰

³⁵⁷ The police maintain character rolls for each enrolled police officer (inspectors, SI, ASI, HC and constables). This roll includes major and minor punishments, the record of posting, and progress report. These rolls are maintained until three years after the police officer dies or unenrolls. Punjab Police Rules, 1934, (Chandigarh, India: Chawla Publications (Ltd), 1998), rules 12.28-12.35.

³⁵⁸ Human Rights Watch, “India – Punjab Amicus Curiae Brief,” (2003), <http://www.hrw.org/pub/amicusbriefs/punjab.pdf> (accessed April 22, 2007), Summary of Argument.

³⁵⁹ Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity*, (New York: Routledge, 2001) p. 107.

³⁶⁰ Hayner, p. 130, discussing Human Rights Watch, “Recommendations to the [South African] Truth and Reconciliation Commission,” January 1998.

The commission should focus on naming the individuals who bear the greatest responsibility, including superior responsibility.

In order to protect the due process rights of the accused, the commission should notify individuals about the allegations against them and that the commission intends to name them in its public report, and afford them with an opportunity to respond to the allegations.³⁶¹ This process is similar to Section 8(b) notices in India's Commission of Inquiry Act. However, the commission should ensure that effective procedures are in place to ensure that those bringing accusations are not placed at risk.³⁶²

The commission must provide protection to victims and witnesses who participate in its hearings. Some families visited by Ensaaf, whose cases initially received a measure of support from the government, expressed that after several years they compromised with the police because they could not sustain their cases under police intimidation, abuse, and prolonged legal proceedings. The commission should further provide psychological and medical support to those who testify, in order to help witnesses who develop secondary trauma from testifying.³⁶³ For further protection, the courts must prohibit police and their agents from all contact and communication with victim families and their relatives and attorneys, with the provision of strong penalties for any violations.

A time frame of two years would give the commission sufficient time to thoroughly investigate the abuses, provided it has adequate resources. A deadline is needed in order to prevent the excessive delay that has characterized the Punjab mass cremations litigation before the NHRC, with the repeated reframing of issues. A delay will decrease the commission's credibility among victims' families, as some have already been struggling for truth and justice since the early 1980s. Such a time frame

³⁶¹ Impunity Principles, principle 9(b).

³⁶² See Hayner, p. 129.

³⁶³ See e.g. Impunity Principles, principle 10. See also, ICTJ, "Comments on Draft Internal Rules for the Extraordinary Chambers in the Courts of Cambodia," November 2006, <http://www.ictj.org/images/content/6/o/6o1.pdf> (accessed May 19, 2007), p. 5.

will not hamper the commission's work. Argentina's truth commission, for example, took over 7,000 statements in nine months.³⁶⁴

The commission should hand its case files directly to the Special Prosecutor's Office (SPO) in order to facilitate the investigation of cases.³⁶⁵ For example, Argentina's National Commission on Disappeared Persons (La Comision Nacional Sobre la Desaparicion de Personas, CONADEP) issued its report in 1984; after CONADEP provided its files to the judicial system, the judiciary was able to quickly build cases against alleged senior perpetrators so that trials began 18 months after the government transition, including the operation time of the commission.³⁶⁶ Similarly, in Mexico, about 270 of the 320 cases initially investigated by the SPO were previously investigated by the Mexican truth commission. The SPO was directly able to incorporate documents collected by the truth commission, as long as the records were authenticated according to law.³⁶⁷ Thus, de novo investigations were not required. This is important in the Punjab context where the judicial process has led to repeated and redundant investigations, prolonging trials and facilitating the destruction of evidence, as demonstrated by Tarlochan Singh's 18-year struggle for justice for his son Kulwinder Singh.

A truth commission cannot be a substitute for prosecutions.³⁶⁸ The commission will serve a crucial truth-telling function, which prosecutions alone cannot fulfill because of the high standard of proof required for criminal cases. Thus, the truth commission will provide official acknowledgment to families in cases where official wrongdoing cannot be established at the level of criminal culpability, but where the evidence nonetheless is sufficient to establish a record of "disappearance."

³⁶⁴ See Hayner, p. 34.

³⁶⁵ See e.g. Impunity Principles, principle 8(e): "Commissions of inquiry shall endeavour to safeguard evidence for later use in the administration of justice."

³⁶⁶ Rebecca Lichtenfeld, ICTJ, "Accountability in Argentina: 20 Years Later, Transitional Justice Maintains Momentum," August 2005, <http://www.ictj.org/images/content/5/2/525.pdf> (accessed May 19, 2007), p. 2.

³⁶⁷ Paul Seils, ICTJ, "A Promise Unfulfilled? The Special Prosecutor's Office in Mexico," Occasional Paper Series, June 2004, <http://www.ictj.org/images/content/1/1/111.pdf> (accessed May 19, 2007), p. 14.

³⁶⁸ Impunity Principles, principle 8.

Right to justice: Special Prosecutor's Office

The International Covenant on Civil and Political Rights requires India to ensure that those responsible for gross violations of human rights are brought to justice.

According to the Human Rights Committee's General Comment No. 31, "As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant."³⁶⁹

Prosecutions through India's existing criminal justice system have failed to lead to accountability. A study of 90 habeas corpus cases filed on behalf of the "disappeared" demonstrated that the majority of the cases were dismissed by the Punjab and Haryana High Court before reaching the point where charges would be filed. Police denials, disputed technical facts, claims of a lack of police motive, and the lack of supporting affidavits, which families had difficulties gathering because of police abuse, among other issues, were reasons the court used to dismiss the petitions and deny the reality of abuses.³⁷⁰ Petitions were also impermissibly dismissed because of a delay in filing, even though there is no statute of limitations for filing petitions regarding violations of fundamental rights.³⁷¹

As demonstrated in the case studies discussed in this report, several problems have plagued criminal trials, ranging from pro-police biases in the investigating and prosecuting authority and the CBI's failure to charge senior police officers; reliance on police officers to conduct inquiries into their colleagues' actions; redundancies in the criminal process that lead to lengthy delays and the destruction of evidence; and falsification of police and government records to cover up abuses. Police harassment has intimidated witnesses into turning hostile or refusing to provide evidence, and also caused complainants to withdraw cases after repeated abuses.

³⁶⁹ Human Rights Committee, General Comment 31, para. 18; see also Impunity Principles, principle 19; Reparations Principles, principle 2(b).

³⁷⁰ Jaskaran Kaur, "A Judicial Blackout: Judicial Impunity for Disappearances in Punjab, India," *Harvard Human Rights Journal*, vol. 15 (2002), pp. 287, 289.

³⁷¹ *Ibid.*

In order to fulfill its international obligations to redress the right to justice, the Indian government should create a Special Prosecutor's Office (SPO) and fast track courts that will:

- Investigate “system crimes,” including command structures and disciplinary practices, to identify the institutions and individuals that perpetrated the mass state crimes that occurred during the counterinsurgency;³⁷²
- Prosecute the officials most responsible for the “disappearances,” extrajudicial executions and other abuses, including officials with superior responsibility who knew or should have known about the pattern of abuses but took no action;
- In accordance with Indian law and due process, allow victim families to select private human rights attorneys who will work in conjunction with the SPO in conducting the prosecutions;
- Constitute fast track courts that will hold daily hearings in these cases; and
- Make provisions for transcripts or audio-recording of trials in order to increase transparency and accountability.

The government should also reform the Indian criminal procedure to remove the requirement of “prosecution sanction” and introduce “disappearance” as a crime in India's penal code. The CBI should further publicly release detailed information on all arrests, prosecutions, and convictions against security forces for human rights violations up to this point.

By focusing on system crimes and the most responsible officials, India will be able to more efficiently manage resources in the face of massive state crimes. As one commentator writing about the special prosecutor's office in Mexico states:

This is important for three reasons. First, a series of prosecutions of low-level perpetrators, however morally and legally culpable, runs the risk of giving the appearance of scapegoats being sacrificed to protect those in positions of power. Second, prosecuting those with the

³⁷² See e.g. Paul Seils, ICTJ, “A Promise Unfulfilled? The Special Prosecutor's Office in Mexico,” Occasional Paper Series, June 2004, <http://www.ictj.org/images/content/1/1/111.pdf> (accessed May 19, 2007), p. i.

greatest responsibility offers the possibility of conveying to those victims whose cases cannot be directly included in a prosecution strategy that those responsible for the patterns of human rights abuses have been brought to justice. Even though a particular case may not reach trial, the victim may derive some moral satisfaction from knowing that those responsible for ordering or organizing these crimes have been held accountable. Third, if individuals who hold positions of responsibility within state institutions have abused their power by directing or permitting serious human rights violations, institutional legitimacy can be more successfully reconstructed if it is shown that individuals who abuse responsibility will be held accountable.³⁷³

By focusing on system crimes rather than isolated incidents, the SPO can bring several cases as evidence to support a single charge, allowing for greater participation by victims and decreased exposure to police harassment.³⁷⁴

While the commission of inquiry completes its investigations and prepares the recommendation of cases for the SPO, the SPO should engage in a consultative process and establish and staff itself. The SPO should begin operations after the commission has transferred its files and endeavor to conclude trials promptly in order to prevent eroding of the public trust and the desire to cooperate.³⁷⁵ However, the government should not set a termination date for the court because that would create an incentive for the accused to delay the prosecution, or cause the court to infringe upon the rights of the accused.

The SPO should incorporate outreach to families of victims into its work, in order to re-establish faith in the judiciary. Thus, it should visit Amritsar and other major cities

³⁷³ Ibid., p. 18.

³⁷⁴ Ibid., pp. ii-iii.

³⁷⁵ For example, public perception is that the Mexican SPO operated slowly because after two and a half years, it had only issued arrest warrants for three isolated cases, and only had one person in custody. Paul Seils, ICTJ, "A Promise Unfulfilled? The Special Prosecutor's Office in Mexico," Occasional Paper Series, June 2004, <http://www.ictj.org/images/content/1/1/111.pdf> (accessed May 19, 2007), p. i. The SPO's office was disbanded in December 2006, having only initiated prosecutions in 2.5% of the 532 cases investigated, ultimately resulting in only 7 arrest warrants. Emilio Godoy, "Rights-Mexico: Truth Commission or Justice Commission?" IPS News, August 16, 2007, <http://www.ipsnews.net/news.asp?idnews=38897> (accessed September 10, 2007).

in Punjab and create a network of district coordinators.³⁷⁶ Through regular case updates and seminars, the SPO should aim to increase victims' families' awareness of developments in the prosecutions and their understanding of why the SPO has selected certain prosecutions. The SPO should also solicit feedback and work to address any misconceptions.³⁷⁷

In order to increase public faith in the SPO's work and transparency, the SPO should provide full transcripts of hearings,³⁷⁸ as well as place major decisions and motions online. In accordance with Indian law and due process, the SPO should also allow the participation of private attorneys selected by victim families in the prosecution of cases.³⁷⁹ Mrs. Khalra's attorneys played an essential role in the CBI's prosecutions of the officers accused of her husband's abduction and murder. Among other contributions, they ensured the inclusion of key witness SPO Kuldip Singh, as well as the revision of charges to include murder charges.

Right to reparations: A comprehensive reparations program

The ICCPR requires that states make reparation to individuals whose rights have been violated.³⁸⁰ The Indian government should provide victims and their beneficiaries with reparations through a prompt and effective procedure.³⁸¹ Unlike the procedure adopted by the National Human Rights Commission in the Punjab mass cremations case—where families were not allowed to directly participate, confirmations of eligibility for compensation depended on police approval, and arbitrary restrictions excluded many victims and beneficiaries—victims and civil

³⁷⁶ Tom Perriello and Marieke Wierda, ICTJ, "The Special Court for Sierra Leone Under Scrutiny," March 2006, <http://www.ictj.org/static/Prosecutions/Sierra.study.pdf>, p. 36.

³⁷⁷ United Nations Commission on Human Rights, "Independent study on best practices, including recommendations, to assist states in strengthening their domestic capacity to combat all aspects of impunity, by Professor Diane Orentlicher," E/CN.4/2004/88, February 27, 2004, [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2004.88.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2004.88.En?Opendocument) (accessed May 19, 2007), para. 40.

³⁷⁸ ICTJ, "Comments on Draft Internal Rules for the Extraordinary Chambers in the Courts of Cambodia," November 2006, <http://www.ictj.org/images/content/6/o/6o1.pdf> (accessed May 19, 2007), p. 11

³⁷⁹ See e.g. Impunity Principles, principle 19.

³⁸⁰ Human Rights Committee, General Comment 31, para. 16.

³⁸¹ Impunity Principles, principle 32.

society “should play a meaningful role in the design and implementation” of the reparations program.³⁸²

The Reparations Principles, adopted by the UN General Assembly, include the following components of reparations: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.³⁸³ Reparations are premised on the principle of non-discrimination, where all victims who have suffered like violations receive like reparations.³⁸⁴ Further, reparations “should be proportional to the gravity of the violations and the harm suffered.”³⁸⁵

In order to remedy violations of the right to life, the Indian government should, among other actions:

- Provide compensation to victims and their beneficiaries based on the spectrum of rights violations they have suffered, such as enforced disappearance, torture, cruel, inhuman, or degrading treatment or punishment, arbitrary detention, extortion, and destruction of property;
- Provide health care assistance for physical and mental harm incurred by victims and their families;
- Expunge criminal records of false cases filed against victims and their family members;
- Determine the final fate of the “disappeared”³⁸⁶; and
- Develop memorials and monuments that commemorate and acknowledge the victims of the counterinsurgency abuses.

The commission of inquiry should be empowered to provide reparations as it determines, although a separate administrative body should dispense the reparations.³⁸⁷

³⁸² Ibid.

³⁸³ Reparations Principles, principles 19-23.

³⁸⁴ Reparations Principles, principle 25.

³⁸⁵ Reparations Principles, principle 15.

³⁸⁶ Impunity Principles, principle 34.

Two of the challenges that face reparations programs are the completeness or ability of the program to cover all potential beneficiaries through its selection of rights violations, evidentiary standards, and structural procedures, as well as the comprehensiveness of the program, or the harms it attempts to redress.³⁸⁸ The gross human rights violations perpetrated during the counterinsurgency included several types of violations, ranging from “disappearances” and extrajudicial executions, to torture, arbitrary detention, extortion, and destruction of property. Further, one victim typically suffered numerous violations. Consultations with victims’ families and civil society could help determine the rights violations covered.

According to the Reparations Principles, compensation should be provided for any economically assessable damage resulting from gross violations of human rights, such as physical or mental harm, moral damage, lost opportunities, and material damage and loss of earnings.³⁸⁹ The PHR/Bellevue study, for example, demonstrated that in 35 percent of the cases, respondents described permanent physical disabilities or injuries.³⁹⁰ Nearly 40 percent of the individuals interviewed “revealed symptoms consistent with a diagnosis of Major Depression” at the time of the evaluation, and 33 percent reported current symptoms consistent with post-traumatic stress disorder.³⁹¹ Further, nearly 80 percent of the individuals had “significantly elevated” scores on an index that measures overall psychological distress.³⁹² Thus, many victims’ family members continue to suffer mental and physical trauma, over ten years after the violations occurred.

³⁸⁷ United Nations Commission on Human Rights, “Independent study on best practices, including recommendations, to assist states in strengthening their domestic capacity to combat all aspects of impunity, by Professor Diane Orentlicher,” E/CN.4/2004/88, February 27, 2004, [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2004.88.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2004.88.En?Opendocument) (accessed May 19, 2007), para. 19(b).

³⁸⁸ Pablo de Greiff, “Introduction: Repairing the Past; Compensation for Victims of Human Rights Violations,” in Pablo de Greiff, ed., *The Handbook of Reparations* (Oxford: Oxford University Press, 2006), pp. 6-10.

³⁸⁹ Reparations Principles, principle 20.

³⁹⁰ Physicians for Human Rights and Bellevue/NYU Program for Survivors of Torture, “Evaluation of Litigants Pertaining to Writ Petition (Crl.) No. 447/95 Committee for Information and Initiative on Punjab v. State of Punjab,” October 18, 2005, <http://www.ensaaf.org/pdf/reports/PHR-Bellevue.pdf> (accessed April 13, 2007), pp. 9-10.

³⁹¹ *Ibid.*, p. 11.

³⁹² *Ibid.*, p. 11.

The procedure for securing reparations must also be developed in consultation with victims' families, so that it does not further alienate victims. The effectiveness of the program will be determined by its accessibility. Lessons can be drawn from the failures of the Punjab mass cremations case, as well as the negative experience with procedures instituted for victims of the 1984 Bhopal gas disaster:

[Bhopal c]laimants had to pass through several stages in order to secure compensation: registration; identification (requiring proofs of identity, residence and medical records to prove gas effects); notification of their hearing; categorization; adjudication and, for an unfortunate few, the appeals process. Survivors say that the process involved innumerable trips to hospitals, government offices, lawyers, banks and the court. They said they had to stand for hours in long lines and endure apathy, indifference, suspicion and corruption at the hands of employees, brokers, middlemen and lawyers.³⁹³

Victims' families should be allowed to file an appeal if they are denied reparations, with a time limit on the resolution of their cases.³⁹⁴

The commission should further provide concrete recommendations on guarantees of non-recurrence of violations. The Indian government should, with appropriate due process safeguards:

- Remove officers and public servants from power who have been proven to have violated human rights, either through direct participation or superior responsibility;
- Remove officers and public servants from power who have been proven to have violated ethics, regulations, practices, or policies that facilitated human rights violations;

³⁹³ International Campaign for Justice in Bhopal, "Compensation Fact Sheet." Copy on file with Ensaaf.

³⁹⁴ In Argentina, a survivor could file an appeal within 10 days of the rejection of an application, and the courts had 20 days to resolve the appeal. Maria Jose Guembe, "Economic Reparations for Grave Human Rights Violations: The Argentinean Experience," in Pablo de Greiff, ed., *The Handbook of Reparations* (Oxford: Oxford University Press, 2006), p. 31.

- Revise the penal code, incorporating “disappearance” as a crime with punishment commensurate to the crime;
- Enact legislation ensuring that no public official, including a military, police, law enforcement, or other state agent who has committed violations of human rights be relieved of personal responsibility by amnesties, legal immunities or indemnities. Other impediments to the establishment of legal responsibility should also be removed, such as the defense of obedience to superior orders or unreasonably short periods of statutory limitation;
- Repeal all legal provisions providing effective immunity to the security forces. These include Section 45 of the Criminal Procedure Code, which prohibits the arrest of members of the armed forces without permission of the central government, and Section 197(2) of the Criminal Procedure Code, which prohibits the prosecution of members of the armed forces without permission of the central government;
- Invite the United Nations Special Rapporteur on Torture, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the UN Working Group on Enforced and Involuntary Disappearances, and the UN Working Group on Arbitrary Detentions to India to investigate and report on the situation, and implement these agencies’ recommendations in a timely manner; and
- Ratify the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

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